

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

-vs-

Case No. 5:21-HC-02164-M

JAMES KOZOHORSKY,

Defendant.

BENCH TRIAL - VOLUME I
MARCH 27, 2023
THE HONORABLE CHIEF JUDGE RICHARD E. MYERS II
UNITED STATES DISTRICT JUDGE

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TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 9:33 a.m.)

THE COURT: All right. If the clerk would please call the case.

THE CLERK: The United States versus James Kozohorsky.

THE COURT: Counsel, please state your appearance for the record.

MS. PRATESI: Good morning, Your Honor. Holly Pratesi for the government.

MR. BREDENBERG: And Mike Bredenberg for the government.

MS. COSTELLO: Haleri Costello for the respondent.

MS. SHEA: And Katherine Shea for the respondent.

THE COURT: All right. Before we proceed, there's a motion in limine. We'll start with the motion in limine.

MS. COSTELLO: Your Honor, the motion in limine is the government's motion to keep out a witness that we actually are not going to be calling, and so I think that moots the motion.

THE COURT: All right. Motion is moot. All right. We will proceed.

1 All right. The clerk has provided the Court
2 with all the trial exhibits. I have those. My
3 understanding is there's some motions work regarding the
4 exhibits themselves, is that correct?

5 MS. PRATESI: Your Honor, there's no motions
6 pertaining to the exhibits, but there were some
7 objections. Counsel and I spoke this morning, and we'd
8 like to move the entire binder into evidence, subject to
9 respondent's objection to hearsay to Government's
10 Exhibit 10 and the government's objection to
11 Respondent's Exhibit 7 for hearsay and authentication.

12 THE COURT: All right. So we have
13 objections to 7 and 10 regarding hearsay.

14 MS. PRATESI: Yes. Government Exhibit 10,
15 Respondent Exhibit 7.

16 THE COURT: All right. So Government's
17 Exhibit 10 has a hearsay objection.

18 MS. PRATESI: Correct, Your Honor.

19 THE COURT: And Respondent's Exhibit 7 has
20 hearsay and authentication? Is that correct?

21 MS. PRATESI: Yes, Your Honor.

22 THE COURT: All right. The exhibits are all
23 admitted, subject to those objections, which we will
24 hear in the course of time as it becomes clear to the
25 Court what it is we may be concerned about.

1 Anything else we need to take up pretrial?

2 MS. COSTELLO: Your Honor, my client has a
3 documented medical history of AFib, atrial fibrillation,
4 and he informed me this morning that he believes he is
5 currently in AFib. He says that he is fine to proceed.
6 He doesn't need medical attention. But I did want to
7 put that on the record in case something arises during
8 the course of the proceedings, just so that the Court is
9 aware. But we don't want a continuance at this time.

10 THE COURT: All right. Mr. Kozohorsky, if
11 you need anything at any time, you let your attorney
12 know and -- I want you fit and healthy, sir, so --

13 THE RESPONDENT: Yes, sir.

14 THE COURT: -- we will take care of anything
15 that comes up, okay?

16 THE RESPONDENT: Yes, sir.

17 THE COURT: All right. All right. Sealing
18 matters. Anything that we need to seal?

19 MS. PRATESI: Not that I'm aware of, Your
20 Honor.

21 MS. COSTELLO: Not for respondent, Your
22 Honor.

23 THE COURT: All right. Witness
24 sequestration? I think we have experts. Okay. No
25 request for sequestration --

1 MS. COSTELLO: No, Your Honor.

2 THE COURT: -- from either party.

3 MS. PRATESI: No.

4 THE COURT: I believe all of the experts --
5 there's no objection to any of the experts'
6 qualifications as experts, is that correct?

7 MS. COSTELLO: That's correct, Your Honor.

8 MS. PRATESI: Correct, Your Honor.

9 THE COURT: Okay. Ms. Pratesi, are you in
10 contact with any victims who may wish to testify today?

11 MS. PRATESI: No, Your Honor.

12 THE COURT: All right. We're here today on
13 the United States's petition for the civil commitment of
14 James Kozohorsky pursuant to Title 18, United States
15 Code, Section 4248(d). He's been certified by Jamie
16 Hersant, Ph.D., a clinical psychologist, as a sexually
17 dangerous person as defined by Title 18, United States
18 Code, Section 4247(a)(5), and sexually dangerous to
19 others as defined by Title 18, United States Code,
20 Section 4247(a)(6). That's the allegation. Before we
21 proceed to the evidence, does the United States wish to
22 make any opening remarks?

23 MS. PRATESI: Yes, Your Honor, just briefly.

24 Your Honor, the evidence presented today
25 will show that the respondent, James Kozohorsky, is an

1 unrepentant, serial rapist who should be committed to
2 the custody of the Attorney General in order to protect
3 the public.

4 Your Honor, the respondent concedes that he
5 has engaged in or attempted to engage in sexually
6 violent conduct, but the evidence will show today that
7 his history of sexually violent conduct is far more
8 extensive than the one offense he admits that he
9 committed.

10 There is documented evidence that
11 Mr. Kozohorsky first attempted to rape a woman in
12 January of 1987, when he was 22 years old, by holding a
13 knife to her throat. There is documented -- he
14 admits -- excuse me -- that only four days later he
15 vaginally raped a young woman by bending her over the
16 sink in the bathroom at her place of employment and
17 threatening to hit her if she did not shut up and
18 comply. There's credible documented evidence that two
19 years later he raped another acquaintance, this time a
20 middle-aged woman, by coming to her home, throwing her
21 on the bed, and forcibly vaginally raping her. There is
22 also credible documented evidence that shortly after his
23 release from prison for that offense, he anally raped a
24 woman that he knew in her home. And finally, there is
25 credible evidence that he sexually and physically

1 assaulted another woman as recently as 2010. He has
2 been incarcerated since 2010.

3 Two forensic psychologists, Dr. Dawn Graney
4 and Dr. Mark Hastings, have diagnosed Mr. Kozohorsky
5 with serious mental illnesses, abnormalities, or
6 disorders. These experts have diagnosed him with other
7 specified paraphilic disorder (nonconsent), and other
8 specified personality disorder with antisocial features.
9 He's also diagnosed with alcohol use disorder.

10 These experts will credibly and persuasively
11 explain that Mr. Kozohorsky has a deviant sexual
12 interest in forced or coerced sexual acts and that he
13 evidences a pervasive pattern of disregard for the
14 rights of others.

15 And finally, Your Honor, the evidence will
16 show here today that as a result of his diagnosed mental
17 disorders, he will have serious difficulty refraining
18 from sexually violent conduct if released. The evidence
19 will show presence of a combination of static and
20 dynamic risk factors that, taken together, lead only to
21 a conclusion that Mr. Kozohorsky will have serious
22 difficulty refraining from sexually violent conduct if
23 he is released. The evidence will show a pervasive and
24 persistent historical pattern of sexual violence. It
25 will show that he has no remorse for his past sexual

1 violence. It will show that he denies or minimizes most
2 of his criminal actions. He blames his victims and he
3 blames women, generally.

4 The evidence will show that he doesn't
5 believe he needs sex offender treatment. It will show
6 that he has no respect for authority. He has failed to
7 follow the law, he has repeatedly failed to follow terms
8 of supervision, and he has failed to properly register
9 as a sex offender.

10 So after reviewing the exhibits and the
11 evidence presented here today, after listening to the
12 testimony offered, we will ask this Court to protect
13 society from Mr. Kozohorsky's sexual violence by finding
14 that he is sexually dangerous to others and committing
15 him to the custody of the Attorney General. Thank you.

16 THE COURT: Thank you, counsel.

17 MS. COSTELLO: Thank you, Your Honor.

18 Judge, the government's case suffers from
19 three fatal flaws. First: The main diagnosis relied
20 upon by the government's experts is other specified
21 paraphilic disorder (nonconsent), which is a paraphilia
22 or deviant sexual interest in nonconsensual sex. You
23 will hear evidence that the diagnosis of nonconsent
24 paraphilia is at best questionable within the
25 psychological community. You will hear evidence that

1 there are jurisdictions in the United States that have
2 banned its use in civil commitment proceedings. You
3 will hear evidence that it does not have specific
4 criteria, that it has been considered for inclusion in
5 many iterations of the DSM, which is the manual that
6 psychologists use to diagnose mental illnesses, but has
7 never been included. There are significant questions
8 about the legitimacy of this diagnosis such that it
9 should not be relied upon to civilly commit

10 Mr. Kozohorsky.

11 We ask you to listen carefully to the
12 evidence about this diagnosis and whether it is the type
13 of diagnosis that should be relied upon in a case about
14 indefinite preventive detention, such as this one.

15 Second: Even if you accept the diagnosis,
16 there is no compelling evidence that Mr. Kozohorsky is
17 specifically attracted to nonconsensual sex. You will
18 hear testimony about the myriad reasons that people
19 commit the crime of rape, how rape is inherently a
20 nonconsensual act, how it is difficult to prove that a
21 person is specifically attracted to nonconsensual sex,
22 how there are no empirically validated criteria or tests
23 with which to do so.

24 You will also hear evidence that
25 Mr. Kozohorsky has had numerous consenting sexual

1 partners, that he has used prostitutes for sex, he has
2 specifically paid women to consent to sex with him. You
3 will not hear evidence that is clear and convincing that
4 he has an abnormally persistent attraction to
5 nonconsensual sex.

6 You will also hear evidence from the
7 government, as they just noted, that there are five
8 credible allegations of rape in Mr. Kozohorsky's case;
9 two in 1987, one in 1989, one in 2006, and one in 2010.
10 I want to specifically draw your attention to the two
11 most recent allegations, 2006 and 2010, and discuss some
12 of the evidence that you are likely to hear about those.

13 In 2006, you will hear evidence that
14 Mr. Kozohorsky, who at that time had two prior rape
15 convictions, was charged with four counts of rape of a
16 woman named Linda Burnsed. You will hear evidence that
17 he ultimately pleaded guilty to one count, not of rape
18 but of attempted rape; that he, a twice convicted
19 rapist, got a suspended sentence.

20 You will hear evidence that Mr. Kozohorsky
21 denies this rape, that it was a consensual sexual
22 encounter that he audiotaped. You will also hear
23 evidence that calls into question the victim's account
24 of events that night, that calls into question whether
25 her account of what happened that night can and should

1 be used as evidence of his attraction specifically to
2 nonconsent.

3 You will also hear the government discuss a
4 sexual assault claim by a Christine Harvey from 2010
5 shortly before Mr. Kozohorsky entered into his current
6 federal sentence. You will hear evidence that there is
7 a police report that states that Ms. Harvey accused
8 Mr. Kozohorsky of, quote, "sexual assault;" that the
9 police report includes no additional details; that
10 Mr. Kozohorsky, at that time a thrice convicted rapist,
11 was never charged with an offense nor convicted of an
12 offense stemming from this incident; that in his federal
13 sex offense case, the presentence report recommended a
14 six-level enhancement for committing a sexual crime
15 while in failure to register status based on this
16 allegation, and you will hear evidence that the
17 government ultimately conceded that that enhancement did
18 not apply at his federal sentencing.

19 You will not hear clear and convincing
20 evidence that this 2010 assault happened. And, in fact,
21 the basis of our objection -- we have an objection to
22 that actual police report, and it stems from the fact
23 that there is nothing that has ever been determined that
24 this assault happened. There's no evidence of it.

25 And so when trying to determine whether

1 Mr. Kozohorsky is specifically attracted to
2 nonconsensual sex, we ask you to keep these two
3 incidents in mind because the specific facts are
4 important. The government simply can't prove that
5 Mr. Kozohorsky is a serial rapist. Kansas v. Crane
6 tells us that. They have to prove that he is something
7 other than the dangerous but typical recidivist, someone
8 whose behavior is driven by a serious mental illness,
9 abnormality, or disorder -- in this case, an attraction
10 to nonconsensual sex -- that so dominates his psyche
11 that he would have serious difficulty controlling his
12 sexual behavior if released. You will not hear evidence
13 that corroborates this.

14 Three. There is no compelling evidence that
15 he lacks volitional control. Mr. Kozohorsky has been in
16 federal custody for ten years. He has excellent prison
17 conduct; no infractions, no sexual misconduct
18 whatsoever. You may hear evidence that he has engaged
19 in some behaviors in the past year while in the
20 treatment program at Butner, which he voluntarily
21 joined, that could have resulted in an incident report.
22 But you will never hear that he received one, and you
23 will also hear that these purported incidents were not
24 sexual in nature.

25 You will hear evidence that he lived for

1 three years in the community from 2007 until 2010 with
2 no credible allegations of sexual assault. You will
3 hear that he has only two allegations against him in the
4 past 34 years, that he has served much of that time in
5 prison, but that there are female prison guards with
6 whom he has never tried to engage in sexual behavior.

7 You will hear that Mr. Kozohorsky has had
8 many consenting sexual partners over the course of his
9 life. You will hear that his score on the lodestone
10 actuarial instrument that predicts risk, the Static-99R,
11 is a 4, and that when he turns 60 in 14 months it will
12 be a 2.

13 You will also hear that at that time he will
14 be on supervision. He will, in fact, be on lifetime
15 supervision by the federal government. He will be
16 required to do sex offender treatment. You will hear
17 that he is in custody for failing to register as a sex
18 offender, but for the vast majority of his history, he
19 did, in fact, register as required by law and that he is
20 required to do so in the future.

21 Judge, simply put, you will not hear
22 evidence that any mental illness so significantly
23 diminishes his volitional capacity that he is
24 distinguishable from the dangerous but typical
25 recidivist. The government cannot prove their diagnosis

1 is legitimate. They cannot prove that even if it is
2 legitimate it applies to Mr. Kozohorsky. And they
3 cannot prove that even if it applies it would cause him
4 serious difficulty refraining from sexually violent
5 conduct. And so at the close of the government's case,
6 we'll come before you and ask you to deny the
7 government's motion. Thank you.

8 THE COURT: Thank you, counsel.

9 All right. Ms. Pratesi, you may call your
10 first witness.

11 MS. PRATESI: Thank you, Your Honor. The
12 United States calls James Kozohorsky.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand, and state your name for
15 the record.

16 THE RESPONDENT: James Kozohorsky.

17 (The respondent was placed under oath.)

18 THE COURT: You may proceed, counsel.

19 MS. PRATESI: Thank you.

20 DIRECT EXAMINATION

21 BY MS. PRATESI:

22 Q. Good morning, Mr. Kozohorsky.

23 A. How you doing?

24 Q. Good. Thanks. Can you please state your full
25 name for the record.

1 A. James Daniel Kozohorsky.

2 Q. You've also gone by other names or aliases, is
3 that correct?

4 A. That's correct.

5 Q. And you've used the alias James Anderson, right?

6 A. Yes. That's my stepdad.

7 Q. And have you also used J.D. Anderson?

8 A. Yes.

9 Q. And James Knapp?

10 A. Yes. That was my stepdad.

11 Q. And also James Larson.

12 A. That was my stepdad as well.

13 Q. You're 58 years old? Is that correct?

14 A. That's correct.

15 Q. And you were born in Michigan, right?

16 A. Yes.

17 Q. And then at some point you moved to Arkansas? Is
18 that correct?

19 A. That's correct.

20 Q. You attended some high school in Jonesboro,
21 Arkansas, right?

22 A. Yes.

23 Q. But you dropped out somewhere around 1979?

24 A. That's correct.

25 Q. And you took vocational training courses for auto

1 mechanics?

2 A. That's correct.

3 Q. And then also diesel mechanics?

4 A. That's correct.

5 Q. And ultimately HVAC, right?

6 A. Yes, ma'am.

7 Q. But you did earn your GED somewhere around 1981,
8 right?

9 A. That's correct.

10 Q. And while you were incarcerated, you took some
11 college courses?

12 A. That's correct.

13 Q. So, Mr. Kozohorsky, you were first arrested in
14 1980 when you were around 15 years old. Does that sound
15 right to you?

16 A. Yes, ma'am.

17 Q. And you were arrested for burglary and theft of
18 property in Arkansas.

19 A. Yes, ma'am.

20 Q. And you were originally given a suspended
21 sentence for that offense?

22 A. That's correct.

23 Q. But about eight months later you were sentenced
24 to five years incarceration with two suspended. Does
25 that sound right to you?

1 A. Yes, ma'am.

2 Q. So you were actually sentenced to three years in
3 custody at that point.

4 A. That's correct.

5 Q. And you paroled somewhere around 1982? Does that
6 sound right to you?

7 A. Yes, ma'am.

8 Q. Within a few months of your release from custody
9 you were arrested in June of 1982 for breaking and
10 entering, theft of property, and possession of a
11 firearm. Do you recall that?

12 A. Yes, ma'am.

13 Q. And you would have been around 18 years old at
14 that time?

15 A. That's correct.

16 Q. And you received a seven-year sentence with two
17 and a half years suspended, correct?

18 A. Yes, ma'am.

19 Q. And so you were supposed to serve somewhere
20 around four, four and a half years in custody.

21 And then sometime after you are released from
22 that sentence, you were arrested in January of 1987. Do
23 you recall that?

24 A. Yes, ma'am.

25 Q. And at that point, you would have been around 22

1 years old?

2 A. Yes, ma'am.

3 Q. And you were charged with aggravated assault and
4 rape. Is that correct?

5 A. That's correct.

6 Q. And those charges stem from two different
7 incidents. Does that sound right to you?

8 A. No.

9 Q. That the aggravated assault charge stemmed from
10 January 11th, and the rape charge stemmed from January
11 15th? Does that sound right?

12 A. No, ma'am.

13 Q. Okay.

14 A. Not to my knowledge, no.

15 Q. Okay. Do you recall that there were charges that
16 you went to the home of a woman named Sandra on January
17 11th, 1987?

18 A. There was charges but, I mean, I don't know that
19 there was ever official charges, but there was a
20 accusation, but I don't think they ever did anything
21 with that.

22 Q. Do you recall the accusation, though?

23 A. Yes, ma'am.

24 Q. Okay. And do you recall that the accusation was
25 that you went to Sandra's home and attempted to have sex

1 with her?

2 A. Yes, ma'am.

3 Q. And do you recall that you went to her home
4 uninvited that night?

5 A. No.

6 Q. Okay. Do you recall that when she opened the
7 door, you pushed your way in?

8 A. No.

9 Q. Do you recall that you asked to use the restroom
10 in her home?

11 A. No, ma'am.

12 Q. Okay. Do you recall that after you did, you came
13 out and you opened a knife that you had brought with
14 you?

15 A. No, ma'am. I don't use a -- I don't have a
16 knife.

17 Q. You've never had a knife?

18 A. Not like -- no.

19 Q. Okay.

20 A. I never threatened anybody with a knife in my
21 life.

22 Q. And so you didn't hold it to her throat?

23 A. No.

24 Q. And you didn't try grabbing her vagina?

25 A. No.

1 Q. And you don't recall her biting you?

2 A. No.

3 Q. And you didn't strike her in the face?

4 A. No.

5 Q. Do you recall if you had ever been to the home
6 before, and she or her mother asked you to leave?

7 A. I don't even know who them people are.

8 Q. Okay. Do you recall being questioned about that
9 incident after you were arrested on January 15th?

10 A. I was questioned about 15 incidents, and they
11 were all proven not to have any merit or validity to
12 them.

13 Q. How about the validity of your arrest for raping
14 Rhonda on January 15th, 1987?

15 A. That was a true accusation. I did that.

16 Q. Okay. And she was about 18 years old at the
17 time?

18 A. 18 or 19, that's correct.

19 Q. And you were 22, right?

20 A. Yes, ma'am.

21 Q. And you had seen her before that date, correct?
22 You knew who she was?

23 A. We dated for about seven months off and on.

24 Q. But you're aware that she denies ever dating you,
25 correct?

1 A. I don't know if she did or not. She might have.
2 I'm not aware that she did, but she might have.

3 Q. So you're not aware that she had reported to the
4 police that you asked her out several times and she
5 refused?

6 A. To my knowledge, no.

7 Q. Okay. And you had never -- did you ever tell
8 your friend that Rhonda was either, I quote, "going to
9 give me some of that, or I'm going to take it"?

10 A. No.

11 Q. So on that day, you went to her place of
12 employment, Bargains Unlimited. Is that correct?

13 A. That's correct.

14 Q. And she asked you to watch the front of the store
15 so she could use the restroom, right?

16 A. That's correct.

17 Q. And instead, you came to the back of the store
18 and you stopped her from exiting the restroom, right?

19 A. That's a good possibility.

20 Q. Okay. And you pushed her up against the wall and
21 told her to pull her pants down?

22 A. Yes.

23 Q. And you said to her, and I quote, "Bitch, you've
24 got a tight ass"?

25 A. Not that I recall, but it might have happened.

1 I'm not gonna deny that.

2 Q. And you proceeded to have sex with her, correct?

3 A. That's correct.

4 Q. Even though she asked you to stop?

5 A. I don't recall her asking me to stop, but she
6 probably did, and I will concede that point.

7 Q. And when you asked -- when she asked you to stop
8 and she asked why you were doing this, do you recall
9 telling her that you liked her and you wanted her?

10 A. No, I don't.

11 Q. Do you recall drawing your fist back and
12 threatening to hit her if she didn't shut up?

13 A. I might have done that. I'm not gonna say I
14 didn't.

15 Q. And you repeatedly told her, and I quote, "Shut
16 up, bitch, or I'll hit you," didn't you?

17 A. That doesn't sound like me but it's possible.
18 I'm not gonna deny that it's not possible.

19 Q. And finally, you threatened that if she didn't
20 shut up, you would, quote, "stick it somewhere else,"
21 quote, didn't you?

22 A. That's a possibility.

23 Q. And once you ejaculated, you left the store. Is
24 that right?

25 A. That's correct.

1 Q. And you weren't arrested at the store, correct?

2 A. No.

3 Q. In fact, you left with the friend that drove you
4 there?

5 A. Yes.

6 Q. And you went to a woman named Barbara's house
7 that afternoon? Is that correct?

8 A. Barbara -- I don't recall a Barbara.

9 Q. Do you recall --

10 A. I went to -- I went to -- give me just a second.
11 I'll tell you exactly whose house I went to and where
12 they drove me. It was Eddie Boone's wife, which would
13 be Charlotte Boone, and she drove me to Missouri.

14 Q. So it's your testimony that you went to Missouri
15 that night.

16 A. Yes. I went to Missouri, and then she talked
17 me -- she talked to me. She told me it'd be best if I
18 turned myself in, that the police had been to my house.
19 And we turned back around, I went back to my house. I
20 called Joel T. Gibson [phonetic], and he come -- he's
21 the police officer there, the sergeant, and he came and
22 he did the formal arrest and took me in.

23 Q. So you don't recall going to a woman's home and
24 pushing your way in.

25 A. No.

1 Q. And you don't recall telling her that you were
2 hiding from the police?

3 A. No.

4 Q. Or that when you were there you asked her to fool
5 around?

6 A. No.

7 Q. And that you exposed your penis to her?

8 A. No.

9 Q. And that you masturbated in front of her?

10 A. No.

11 Q. And that you continued to make vulgar remarks
12 until she got you to leave her house?

13 A. No, ma'am.

14 Q. When you were ultimately arrested that night, you
15 originally told the police that she consented to having
16 sex with you, didn't you?

17 A. Yes.

18 Q. And you said you didn't threaten her or
19 physically harm her?

20 A. I probably did at the time. That's correct.

21 Q. So that was a lie, correct?

22 A. Yes.

23 Q. And you do admit, as we sit here today, that you
24 raped Rhonda, correct?

25 A. Yes.

1 Q. And you pleaded guilty to one count of rape?

2 A. Yes.

3 Q. And the assault charges that we discussed before
4 were dropped, as far as you understand.

5 A. Yes.

6 Q. Okay. So you were sentenced in 1988 to ten years
7 incarceration with seven suspended. Does that sound
8 right to you?

9 A. Yes, ma'am.

10 Q. So you would have been released in about March of
11 1989?

12 A. Yes, ma'am.

13 Q. And then about eight months later in November of
14 1989, you were arrested and charged with the rape of
15 Nadine. Is that right?

16 A. That's correct.

17 Q. And you pleaded guilty to that charge, correct?

18 A. That's correct.

19 Q. Nadine knew you and she knew your wife, is that
20 right?

21 A. That's right.

22 Q. And on November 15th, 1989, you went to her home?

23 A. Yes.

24 Q. And you went into her bedroom, correct?

25 A. That's correct.

1 Q. And when she came in to ask what you were doing,
2 you grabbed her by her hair, is that correct?

3 A. No.

4 Q. And you choked her?

5 A. No.

6 Q. You told her you'd kill her.

7 A. No.

8 Q. And she specifically begged you, and I quote,
9 "Please don't do this, J.D. This is rape and you will
10 go to jail for this." Did she say that to you?

11 A. No.

12 Q. And you didn't tell her, and I quote, "It will be
13 worth it to get a piece of you"?

14 A. No.

15 Q. And you didn't tell her that you'd wanted her for
16 years?

17 A. No.

18 Q. Or that if you had to rape her, you would?

19 A. No.

20 Q. After your arrest but before you pleaded guilty
21 or you were sentenced, you were also arrested for
22 burglary, terroristic threatening, and intimidating a
23 witness, correct?

24 A. That's correct.

25 Q. And that was because not long after that

1 incident, you went to Nadine's home with the intention
2 of terrorizing and threatening her, correct?

3 A. One year later I went to her home. That's
4 correct.

5 Q. And as you previously testified, you pleaded
6 guilty to that rape, correct?

7 A. That's correct.

8 Q. And you were sentenced to 40 years with 15
9 suspended?

10 A. That's correct.

11 Q. And you were also sentenced to a term of
12 incarceration for the burglary, terroristic threats, and
13 intimidating a witness, correct?

14 A. That's correct.

15 Q. And those sentences ran concurrently.

16 A. Yes, ma'am.

17 Q. So you got released in December of 2003. Is that
18 right?

19 A. Yes, ma'am.

20 Q. Okay. And in January of 2006, you were arrested
21 for four counts of rape, correct?

22 A. That's correct.

23 Q. And you were charged with anally raping a woman
24 named Linda?

25 A. Yes, ma'am.

1 Q. And you had dated her casually before your
2 arrest. Is that correct?

3 A. Excuse me?

4 Q. You had dated Linda before you were arrested?

5 A. Yes.

6 Q. But in January, you engaged in anal sex with her
7 against her will.

8 A. No.

9 Q. You didn't tell her, I quote, "I'm gonna give it
10 in your cute little ass," quote, throw her on the bed,
11 and insert your penis into her anus?

12 A. No, ma'am.

13 Q. And you didn't change condoms multiple times?

14 A. Yes, I changed condoms multiple times.

15 Q. And did you use Biofreeze or Icy Hot as a
16 lubricant?

17 A. That is correct.

18 Q. And you told her, and I quote, "You're either
19 going to take it in your ass or I'm gonna pull out and
20 put it in your mouth," quote?

21 A. No, ma'am.

22 Q. Did you insert your fist into her vagina?

23 A. No, ma'am.

24 Q. Did you hold her down while you had sex with her?

25 A. No, ma'am.

1 Q. Before you left, did you tell her -- did you grab
2 her vagina and tell her, quote, "You shouldn't be
3 needing any sex for a while," quote, because she, and
4 again I quote, "should be fixed up for a while"?

5 A. No, ma'am.

6 Q. But you did plead guilty in that case to one
7 count of attempted rape, is that correct?

8 A. That's correct.

9 Q. And you were sentenced to a 120-month suspended
10 sentence in 2007?

11 A. That's correct.

12 Q. And so since your sentence was suspended, you
13 were still in the community in 2007, right?

14 A. Yes, ma'am.

15 Q. And you were on probation?

16 A. On supervised, that's correct.

17 Q. And so while you were on probation, you were
18 required to register as a sex offender.

19 A. That's correct.

20 Q. And that applied whether you lived in Arkansas or
21 another state, like Missouri, correct?

22 A. Yes, ma'am.

23 Q. And you were required to obey all state and
24 federal laws?

25 A. Yes, ma'am.

1 Q. But you were arrested in February of 2008 for
2 driving while intoxicated, correct?

3 A. That's correct.

4 Q. And this arrest was in Arkansas?

5 A. Yes.

6 Q. And the following year in April of 2009, you were
7 arrested for driving while intoxicated again, correct?

8 A. That's correct.

9 Q. And that was in Missouri.

10 A. Yes, ma'am.

11 Q. And in September of 2009, you were arrested in
12 Butler County, Missouri, for failure of a sex offender
13 to report. Do you recall that?

14 A. Yes, ma'am.

15 Q. And that was because you resided in Butler County
16 but you failed to report to the chief law enforcement
17 officer within 90 days of your registration. Does that
18 sound right?

19 A. Yes, ma'am.

20 Q. And in October of 2009, you were arrested and
21 charged by Poplar Bluff Missouri Police with failure to
22 comply with Halloween-related restrictions for sex
23 offenders, is that correct?

24 A. Yes and no.

25 Q. You were arrested for -- you were arrested and

1 charged --

2 A. No, ma'am. I was taken in protective custody. I
3 wasn't arrested. They took me into protected custody
4 hours before that law went into effect.

5 Q. Did you fail to properly register as a sex
6 offender in the state of Arkansas from March 2010 to
7 September of 2010?

8 A. To my knowledge at the time, I didn't think so,
9 no.

10 Q. But did that lead to your federal charges of
11 failure to register?

12 A. Yes.

13 Q. And while you were in failure to register status,
14 you were accused of physical and sexual assault by a
15 woman named Christine. Does that sound right?

16 A. Yes. I found out about that later.

17 Q. And that would have been for a period of time
18 between August 19th to August 24th in 2010.

19 A. I'm not for sure of the dates but that's
20 possible.

21 Q. Okay. And you had dated Christine in the past,
22 is that correct?

23 A. That's correct.

24 Q. But that August, you sexually assaulted her over
25 a period of several days, didn't you?

1 A. No.

2 Q. You also physically assaulted her during that
3 period? Do you recall that?

4 A. I did physically assault her.

5 Q. And you've admitted to slapping her?

6 A. I slapped her one time, that's correct. And I
7 held -- she tried to hit me with a 40 ounce, and I held
8 a jack handle lumber block [ph.] to...

9 Q. And when you used that -- what did you call it?
10 A jack what?

11 A. It was a jack handle. She was trying to hit me
12 with a 40-ounce bottle of beer, and I held it up so she
13 couldn't hit me in the head with it.

14 Q. And that jack handle fractured her arm, correct?

15 A. That's a good possibility.

16 Q. So in January of 2012, you pleaded guilty in the
17 United States District Court for the Eastern District of
18 Missouri to one count of failure to register as a sex
19 offender, correct?

20 A. That's correct.

21 Q. And you were sentenced to ten years in prison?

22 A. That's correct.

23 Q. Mr. Kozohorsky, let me try to summarize a bit
24 here for you. You would agree that at least five women,
25 Sandra, Rhonda, Nadine, Linda, and Christine, have

1 accused you of rape, attempted rape, or other physical
2 or sexual assault. Correct?

3 A. That's correct --

4 MS. COSTELLO: Objection; compound question.

5 THE COURT: The objection is overruled. He
6 understood the question and answered it.

7 BY MS. PRATESI:

8 Q. Mr. Kozohorsky, you've previously admitted to
9 engaging in forced sexual intercourse with your wife,
10 Mary, is that correct?

11 A. That's incorrect.

12 Q. Are there any other instances in which a woman
13 accused you of rape or other sexual physical assault?

14 A. No.

15 Q. Is your testimony today that you only raped one
16 woman?

17 A. That's correct.

18 Q. And that was Rhonda in 1987?

19 A. That is correct.

20 Q. You're only sexually attracted to adult women, is
21 that correct?

22 A. That's correct.

23 Q. And you prefer, and I quote, bubble butt blondes?
24 Is that correct?

25 A. No. That was a joke between me and a AG, but I

1 guess -- and I said that during the deposition, but I
2 guess he didn't get that part. I guess they failed to
3 register that part.

4 Q. You didn't say --

5 A. But I do like bubble butt blondes.

6 Q. And you said that you liked bubble butt blondes
7 at least four times during that deposition, correct?

8 A. Yes.

9 Q. You're not sexually attracted to children, are
10 you?

11 A. No.

12 Q. And you're not sexually attracted to men, are
13 you?

14 A. No.

15 Q. You haven't really participated in monogamous
16 romantic relationships, have you?

17 A. Yes, I have.

18 Q. You were married once, correct?

19 A. That's right.

20 Q. To a woman named Mary?

21 A. That's correct.

22 Q. And you began dating her in about 1982?

23 A. That'd be correct.

24 Q. And you were married from maybe 1987 to 1994?

25 A. That's correct.

1 Q. But you raped Rhonda while you were dating Mary,
2 correct?

3 A. That's correct.

4 Q. And you were convicted of the rape of Nadine
5 while you were still married to your wife, correct?

6 A. That's correct.

7 Q. And you were in an open relationship with a woman
8 named Margaret for 30 years until she died in 2015?

9 A. That's correct.

10 Q. And so when you were convicted of the attempted
11 rape of Linda, you were in an open relationship with
12 Margaret, correct?

13 A. Yes.

14 Q. And at the time of your attempted rape
15 conviction, you were also having an affair with your
16 landlady, Jeannette?

17 A. That's correct.

18 Q. And at the same time, you were also seeing a
19 woman named Cathy, is that right?

20 A. That's correct as well.

21 Q. And when you dated Christine, you impregnated a
22 woman named Precious, is that right?

23 A. That's correct.

24 Q. But it's your understanding that she miscarried
25 the pregnancy.

1 A. That's correct.

2 Q. So you haven't fathered any children that you're
3 aware of, right?

4 A. That's correct.

5 Q. After you were convicted of attempted rape, other
6 than Cathy and Christine, you almost exclusively had sex
7 with prostitutes. Is that correct?

8 A. Say that one more time.

9 Q. After you were convicted of attempted rape, other
10 than Cathy and Christine, you exclusively had sex with
11 prostitutes. Is that right?

12 A. That's pretty well correct, besides Margaret
13 Richmond.

14 Q. So Margaret, Cathy, and Christine were the only
15 women who were not prostitutes that you had sex with
16 after 2006?

17 A. Jeannette.

18 Q. Jeannette. You've had sex with somewhere between
19 25 and 30 prostitutes? Does that sound right?

20 A. That's sounds about right.

21 Q. Now, since you've been in custody, you haven't
22 engaged in sexual intercourse with other inmates, have
23 you?

24 A. No.

25 Q. But you are capable of achieving and maintaining

1 erection, correct?

2 A. That's correct.

3 Q. And you are capable of masturbation?

4 A. That's correct.

5 Q. And you do, in fact, masturbate, correct?

6 A. A lot less than I used to.

7 Q. But at least several times a month?

8 A. I don't know about several but maybe a couple. I
9 don't know if I got energy for several.

10 Q. Do you recall testifying in your deposition when
11 asked if you masturbate, you said, "With myself? I love
12 me. I have sex with me three times a month." Do you
13 recall that?

14 A. Probably.

15 Q. And you can masturbate to completion, is that
16 correct?

17 A. That's correct.

18 Q. Now, Mr. Kozohorsky, if you were released from
19 FCI Butner, would you continue to have sex with
20 prostitutes?

21 A. You know, here's the thing. I thought about
22 that, and I thought about ways to protect myself, and
23 with -- even with the audiotape, that didn't protect me
24 as well as I should have been protected, and I shouldn't
25 have done a year in jail before they released me. And

1 so I was considering different ways, and prostitutes,
2 they only care about the money. But it was pointed out
3 to me that if you're on federal probation, committing
4 another crime is not a good idea, so you have to figure
5 out other options.

6 So at that time, I probably would have thought
7 about that, and I considered that as well as I did body
8 cams or audio or video. But at this time I had to
9 rethink that, and I would say no.

10 Q. Because you believe you need to protect yourself,
11 correct?

12 A. I believe that I need to -- yes. Absolutely.

13 Q. When you were initially considering having sex
14 with prostitutes, is that because you believe you're
15 paying for their consent?

16 A. Yes.

17 Q. And they don't want to cause you a headache or
18 get in a relationship with you, is that right?

19 A. Yes.

20 Q. And as long as you pay them --

21 A. If you'll pardon me for a second, I got a little
22 bit of tone deafness, it's in my files as well, so if I
23 ask you to repeat something, it's because I didn't
24 understand the question. Sometimes the words cancel
25 theirselves out.

1 Q. That's fine. If you can't understand me, please
2 tell me.

3 A. Okay.

4 Q. So is it also true that, in your opinion, as long
5 as you pay a prostitute, they won't be jealous?

6 A. Yes.

7 Q. And we just briefly discussed this, but before
8 you were to have sex with any woman again, you've
9 indicated you would ask her to sign a consent form?

10 A. Yes, I have considered that. I don't know where
11 that would go. I don't know how that would work out,
12 but I have considered that, yes.

13 Q. And you've also considered visually recording any
14 future sexual encounters?

15 A. Yes. I've looked into the body cam and
16 everything else and the laws about recording, video and
17 audio, so I have considered that, yes.

18 Q. And you've considered ensuring that any footage
19 would go to the Cloud so it couldn't be deleted by
20 destroying the camera?

21 A. That's correct.

22 Q. Because you believe that might be the best way to
23 protect yourself from false accusations, is that right?

24 A. That's correct.

25 Q. But you would agree that videotaping an encounter

1 wouldn't -- that alone wouldn't prevent a woman from
2 being raped, correct?

3 A. Yes.

4 Q. Mr. Kozohorsky, your conviction for failure to
5 register, that led to your first time in federal
6 custody. Do I have that right?

7 A. That's correct.

8 Q. And you've remained in Bureau of Prisons custody
9 since your 2012 conviction?

10 A. The U.S. Marshals picked me up in 2010.

11 Q. But after 2012 when you were convicted in federal
12 court, you've been in federal custody, correct?

13 A. Yes.

14 Q. And while you were serving your sentence, you
15 refused to participate in sex offender treatment, is
16 that correct?

17 A. That's correct.

18 Q. But you were often housed in institutions with
19 sex offender management programs. Does that sound right
20 to you?

21 A. One, as far as I know.

22 Q. In 2016, you were housed at FCI Marianna in
23 Florida. Do you recall that?

24 A. That's correct.

25 Q. And in January of '16, you were not permitted to

1 receive an order of pictures because it contained
2 risk-relevant material, right?

3 A. Yes, ma'am.

4 Q. And a few months later, in May of the same year,
5 you were notified that you were not permitted to receive
6 picture brochures that were sent to you?

7 A. Yes, ma'am.

8 Q. And they contained pictures depicting models
9 posing as adolescent females and/or bondage, correct?

10 A. No, ma'am.

11 Q. But do you recall that that's what your rejection
12 notice said?

13 A. No, ma'am. I was called down to psychology, and
14 they just told me that some pictures had been rejected.

15 Q. You completed your criminal sentence in March of
16 2022, correct?

17 A. Yes, ma'am.

18 Q. And again, to be clear for the record, while you
19 were serving your criminal sentence, you did not
20 participate in sex offender treatment.

21 A. That's correct.

22 Q. And you never previously participated in sex
23 offender treatment in the community?

24 A. In the community?

25 Q. Correct. While you were released, had you ever

1 participated?

2 A. No.

3 Q. And you've never participated in sex offender
4 treatment in state prison, correct?

5 A. No.

6 Q. You began participating in the Commitment and
7 Treatment Program, though, at Butner, correct?

8 A. That's correct.

9 Q. And you're in the first phase of treatment?

10 A. Completed first phase.

11 Q. When did you complete that?

12 A. Months ago.

13 Q. Was that the pretreatment program or the --

14 A. No, that was the phase 1. I did the P3, and they
15 discontinued P3 and said it was irrelevant to the
16 program. I completed phase 1, and they're now talking
17 about taking phase 1 out and saying that it's irrelevant
18 to the program and just going straight to phase 2.

19 Q. So is it your understanding right now that you
20 are in phase 2 of treatment?

21 A. That's correct.

22 Q. Okay. But you would agree that you have not
23 completed the treatment program, correct?

24 A. That's correct.

25 Q. And, in fact, you don't believe that you need to

1 complete sex offender treatment, do you?

2 A. No, ma'am.

3 Q. Because you deny that you've raped any woman
4 other than Rhonda, correct?

5 A. That's correct.

6 Q. And you deny that you're aroused by the concept
7 of nonconsensual sex?

8 A. That's correct.

9 Q. If you were released, Mr. Kozohorsky, you have a
10 lifetime term of supervised release. Is that correct?

11 A. That's correct.

12 Q. And that's in the Eastern District of Missouri,
13 right?

14 A. No, ma'am. That would be the Eastern District of
15 Arkansas.

16 Q. So you didn't plead guilty in the United States
17 District Court for the Eastern District of Missouri?

18 A. Yes, ma'am, I did.

19 Q. And has your probation supervision actually been
20 transferred to any other district?

21 A. It's supposed to have been transferred to
22 Arkansas. I mean, my whole release plan was gone over
23 with the federal BOP and it was for Jonesboro, Arkansas.

24 Q. Are you aware of whether that was approved?

25 A. As far as I know, it was.

1 Q. If you were to relocate to Arkansas, if it was
2 approved, your plan is to resume the exact type of work
3 you were doing before you were incarcerated, correct?

4 A. Yes, ma'am.

5 Q. And the type of work that would allow you into
6 other people's homes or motel rooms?

7 A. No, ma'am. I don't go into people's houses. I
8 don't go into people's motel rooms. I would do
9 commercial heating and air for hotels, motels, and
10 restaurants, gas stations. I don't go in anybody's
11 room. I go into the equipment rooms, which are big
12 equipment rooms about the size of this room right here,
13 with a large equipment in it. When I work in
14 convenience stores, I work in the kitchen area, the
15 coolers, that type of stuff.

16 Q. You don't have any family support in the
17 community, do you?

18 A. No, ma'am.

19 Q. And you've been divorced since 1994, correct?

20 A. That's correct.

21 Q. And your parents are deceased?

22 A. That's correct.

23 Q. And you have no contact with your sisters.

24 A. That is also correct.

25 Q. You have one friend that you remain in contact

1 with, though?

2 A. A business partner, yes, and friend.

3 Q. And you were friends with this man while you were
4 engaging in criminal sexual activity, correct?

5 A. I was -- yes, you could say that, but I wasn't --
6 no -- actually, can't say that. No. I misunderstood
7 what you were saying, but the answer is no.

8 Q. When did you become friends with him?

9 A. 2005 or '6, we became business partners -- or not
10 really business partners. I did some work for him. We
11 became friends probably in 2008 or '9.

12 Q. So, Mr. Kozohorsky, since you were about 15 years
13 old, you have not been in the community for more than
14 three years without some criminal offense. Is that
15 correct?

16 A. No, ma'am.

17 Q. It's not correct?

18 A. No, ma'am. I've had charges. I mean, you can
19 say that it was -- you could say about your opinion that
20 it was a criminal charge, but I had audiotape to prove
21 otherwise, so I don't know.

22 Q. Is it accurate that you have not been in the
23 community for more than three years at any time since
24 age 15 without being arrested?

25 A. Yes, ma'am. That's accurate.

1 Q. And when you received a suspended sentence in
2 2006 for the attempted rape of Linda, you were arrested
3 at least four times for criminal offenses. Correct?

4 A. Yes, ma'am.

5 Q. And that would include two DUIs?

6 A. Yes, ma'am.

7 Q. And failure to register as a sex offender?

8 A. That's correct.

9 Q. And that was failure to register in two states
10 and federally, correct?

11 A. No, ma'am, not to my knowledge. I was only
12 indicted for Missouri.

13 Q. You weren't arrested for failure to register in
14 Arkansas as well?

15 A. No, ma'am.

16 Q. Mr. Kozohorsky, you don't believe in following
17 rules you don't agree with, do you?

18 A. I follow every rule that was given to me, as far
19 as I know.

20 Q. You don't respond well to being ordered to do
21 something you don't agree with, do you?

22 A. Can you repeat that one more time?

23 Q. You don't respond well to being ordered to do
24 something you don't agree with, do you?

25 A. I do everything that people ask me to do. How

1 did I stay disciplinary-free for 13 years if I didn't?

2 Q. And if your probation officer were to be pushy or
3 nosy, you wouldn't like that, would you?

4 A. I wouldn't have no problem with that.

5 Q. So you didn't testify in your deposition, and I
6 quote, "If you push me, I'm not gonna accept that"?

7 A. I don't understand what context that would have
8 been under. So, I mean, if you can give more context to
9 it, that might have been something I answered to like
10 that.

11 Q. Okay. The question was, "Do you remember telling
12 anybody you didn't want to talk about your tattoos?"

13 A. Right.

14 Q. And your answer was, "If they were nosy, I might
15 have."

16 A. That's correct.

17 Q. And then you said, "If you push me, I'm not going
18 to accept that. You know what I mean? That's like
19 ordering me. I have absolutely nothing to do with the
20 Department of Corrections, and you send me a paper
21 saying the Department of Corrections" --

22 A. Yes, ma'am.

23 Q. You recall saying --

24 A. That was in that context right there? Yes,
25 ma'am. I did say that.

1 Q. And in that same context, you said, "I don't do
2 good under those situations, I don't deal with it well."

3 A. That's correct.

4 Q. And you said, "Because at that point it's no
5 longer an agreement. You are being abusive."

6 A. That's correct. But if we go all the way back,
7 let's go back to the fact that I was a free man at the
8 time and I had no legal obligation to go there until
9 they just absolutely passed that and demanded I show up,
10 not participate, just be there. So under them
11 circumstances, that's correct.

12 Q. Mr. Kozohorsky, as we sit here today, do you
13 consider yourself sexually dangerous to others?

14 A. No, ma'am.

15 Q. And how does it make you feel that the government
16 is trying to keep you civilly committed because you
17 would have serious difficulty refraining from future
18 sexual violence?

19 A. I have mixed feelings on that. Personally, it's
20 taken a year of my life. But at the same time, looking
21 from society's point of view, you can understand that
22 they have a right to keep society safe. So they have to
23 look at it from society's point.

24 Q. And have you always -- have you maintained that
25 opinion?

1 A. Most of the time, yes, because...

2 Q. Do you recall saying something different at your
3 deposition?

4 A. I know that personally, I don't feel like that it
5 should take place.

6 Q. And did you -- would you agree today with what
7 you said then, and I quote, "It's absolutely bullshit.
8 I committed one rape. I have paid for that rape so many
9 fucking times in my life it's unreal. Today I am
10 sitting here paying for that. To sit here and use
11 pseudoscience to try to hold me here any longer is
12 nuts."

13 A. I do agree with that.

14 MS. PRATESI: Thank you, Mr. Kozohorsky.

15 THE RESPONDENT: Yes.

16 MS. PRATESI: I have no further questions,
17 Your Honor.

18 THE COURT: Your witness, Ms. Costello.

19 CROSS-EXAMINATION

20 BY MS. COSTELLO:

21 Q. Morning, J.D.

22 A. How you doing?

23 Q. How old are you?

24 A. 58.

25 Q. When's your birthday?

1 A. 5/20/64.

2 Q. So in two months you'll be how old?

3 A. 59.

4 Q. You testified on direct examination that you grew
5 up in Michigan? Is that right?

6 A. Yes, ma'am.

7 Q. Were your parents married?

8 A. Yes, ma'am.

9 Q. Did you have any siblings?

10 A. Yes. I had two sisters and a half-sister later
11 on.

12 Q. Were you the oldest or the youngest of your
13 biological full siblings?

14 A. I was the youngest of my biological full
15 siblings.

16 Q. And were you the only boy?

17 A. Yes.

18 Q. Would you say that you had a good family?

19 A. Yes.

20 Q. Did your father treat your mother well?

21 A. Yes.

22 Q. Did your parents treat the kids well?

23 A. Yes.

24 Q. Were you ever abused at all?

25 A. No.

1 Q. What did your dad do for work?

2 A. He worked for General Motors on experimental
3 carburetors.

4 Q. And where did he do that?

5 A. A lot of times, he had a lab out back of our
6 house.

7 Q. And where was that house? What --

8 A. Chicago, Illinois, but we were living in Benton
9 Harbor, Michigan.

10 Q. Okay. So he had a house in a different place.

11 A. Right, by his parents.

12 Q. Is he still living?

13 A. No.

14 Q. How did he pass away?

15 A. He died from carbon monoxide poisoning, from what
16 I understand.

17 Q. And was that --

18 A. Working, work-related.

19 Q. How old were you when that happened?

20 A. I would say between 9 to 10.

21 Q. And after that, who raised you?

22 A. My mother.

23 Q. Did she ever remarry?

24 A. Yes. She remarried within about a year.

25 Q. And did your stepfather play a big role in

1 raising you?

2 A. Not really. He was there, but he was not like
3 the authority figure at the time. My mother was.

4 Q. And did your mother work?

5 A. Yes. She had a -- she didn't work like a regular
6 job. She owned different businesses. She owned a
7 roofing company. She owned a TV repair shop. She owned
8 a dog training school where they train canines and
9 stuff.

10 Q. Would you say that your parents installed a good
11 work ethic in you?

12 A. Yes.

13 Q. How old were you when you first started working?

14 A. 11.

15 Q. And what were you doing?

16 A. Driving a tractor on a farm.

17 Q. Were you also going to school at that time?

18 A. Yes.

19 Q. How did that work? Did you work after school?

20 A. Yes. I worked in the mechanics shop, the diesel
21 shop after school. I drove a tractor on weekends. They
22 give you two days off during -- or two weeks off during
23 planting season and two weeks off during harvest season
24 with excused absences from school.

25 Q. And what decade was this in?

1 A. That was 1970s.

2 Q. Okay. Now, how far did you go in school? What
3 was the last grade you completed?

4 A. The eighth grade.

5 Q. And did your mom allow you to drop out?

6 A. Yes, with the understanding I get a GED within
7 the year, and with the understanding that I enter into a
8 trade school, which is vo-tech.

9 Q. Did you do that?

10 A. Yes, I did.

11 Q. And around that same time, did you move out of
12 your mother's house?

13 A. 15. Yes, ma'am.

14 Q. Where did you move?

15 A. I moved to a apartment about two miles away.

16 Q. Why did you move out at such a young age?

17 A. It was the '70s. You -- it was -- you wanted to
18 -- back then, kids became more adult than nowadays. You
19 went out on your own at a earlier age. And I wanted to
20 explore the world. I wanted to see the world. I wanted
21 to grow up, and so I moved into my own apartment.

22 Q. Was it because you didn't want to follow your
23 mother's rules?

24 A. No. My mother was fine. I was the boy of the
25 family.

1 Q. And how did you support yourself?

2 A. I worked as a automotive mechanic, and I also ran
3 a little small motorcycle repair shop.

4 Q. And you testified to this on direct examination.
5 You were arrested for burglary. What age were you when
6 that happened?

7 A. 15.

8 Q. And why did you -- what did you burglarize?

9 A. I burglarized a store that was actually three
10 stores in one, and they gave me three burglary and
11 thefts, but it was actually just one building. And I
12 burglarized the store to come up with money so I could
13 put my sisters through vocational training schools.

14 Q. And so you did a sentence on that, is that right?

15 A. Yes, ma'am.

16 Q. Where did you go when you were released?

17 A. I went to Osceola, Arkansas.

18 Q. Okay. So how many separate burglary convictions
19 did you have?

20 A. Two. When I got out I got another burglary at a
21 Magic Mart, which is like a WalMart Supercenter, and
22 that was like 28 days after I was released. I went and
23 burglarized the store and got caught in the store, and I
24 did four and a half years at it.

25 Q. Have you burglarized any place since then?

1 A. No, ma'am.

2 Q. And how old were you when you caught that second
3 burglary charge?

4 A. I believe I was about 17.

5 Q. Okay. Generally speaking, how would you describe
6 your work history?

7 A. I have a good work history, a great work history.

8 Q. Do you like to work?

9 A. Yes.

10 Q. When you were living in the community, what kind
11 of hours do you generally work?

12 A. Anywhere from 14 to 18 hours a day, seven days a
13 week.

14 Q. Now, when you were in custody on that burglary
15 sentence, that second one, did you meet Mary Elizabeth?

16 A. Yes. I was at a work release center and I met
17 her at J.T. Purse and Cabinet Factory [ph.], which is
18 where I believe about 22 of the 28 inmate work release
19 guys worked.

20 Q. And did you have a sexual relationship with her?

21 A. Yes.

22 Q. Was the sex consensual?

23 A. That's correct.

24 Q. And when you were -- at some point did y'all move
25 in together?

1 A. Yes. When I was released, she already had a
2 apartment, and I moved straight into the apartment.

3 Q. How often did you have sex with her when y'all
4 were living together?

5 A. I'd say 10 times a week to 12 times a week. I
6 was like 18 years old at the time.

7 Q. Did she ever accuse you of rape?

8 A. No.

9 Q. Did you ever rape her?

10 A. No.

11 Q. Have you ever told anyone that you raped your
12 wife?

13 A. No.

14 Q. Now, you testified on direct examination that in
15 1987 you were charged with the rape of Rhonda Horner.

16 A. That's correct.

17 Q. How did you know her at that time?

18 A. I met Rhonda Horner when I was working for her
19 boss. I forget his name. He had asthma. Anyway, I did
20 some work for him, and I had a working relationship with
21 her boss.

22 Q. And you had testified on direct examination that
23 you committed that rape, right?

24 A. That's correct.

25 Q. Why did you do it?

1 A. I was stupid. I asked her for sex and she told
2 me no, and I really thought that once we got started, it
3 would be like all the other times and she would enjoy
4 it. And so when she told me no -- it was a different
5 era back then. I was raised in the '70s. So we were
6 kind of taught that we're the men of the family and
7 we're the big boss with the big pants on, and so I
8 thought I had an entitlement because we dated. I
9 thought that once we got started she would like it like
10 any other time, and I was incorrect on both accounts.

11 Q. Was the fact that she did not like it arousing to
12 you?

13 A. No.

14 Q. Now, what year did that happen?

15 A. That was in '87.

16 Q. The prosecutor asked you a number of questions
17 about the specific details of that offense. Do you
18 remember exactly what happened back in 1987?

19 A. Yes, ma'am.

20 Q. Okay. Have you always admitted that you
21 committed that rape, or did you deny it at first?

22 A. I denied it when I was first arrested.

23 Q. And how do you feel looking back on it about your
24 behavior?

25 A. I probably ruined her life.

1 Q. What kind of impact do you think your actions
2 might have had on her?

3 A. She probably never trusted nobody again. I
4 definitely hurt her. And I just can't imagine all the
5 stuff that she might have went through.

6 Q. And how old were you at the time?

7 A. 22.

8 Q. Okay. Do you recall at the time you were
9 arrested for that rape other accusations of raping made
10 against you?

11 A. Yes, ma'am.

12 Q. Did you ever plead guilty to any charges of rape
13 or sexual assault in 1987 other than that of Rhonda
14 Horner?

15 A. No, ma'am.

16 Q. Now, you testified that while you were serving
17 your burglary work release sentence, you met a woman
18 named Nadine Davis -- or -- I'm sorry. You testified
19 you met your wife, whose name was Mary Elizabeth. Do
20 you --

21 A. That's correct.

22 Q. -- recall that? Did you meet anyone else?

23 A. Yes. I met Nadine Davis first and started dating
24 Nadine Davis before I dated my wife.

25 Q. Did you say before you dated your wife?

1 A. Yes. That's correct.

2 Q. Did you have a sexual relationship with Nadine?

3 A. Yes. We went on four-hour furlough twice, and we
4 left at lunch, maybe six or eight times.

5 Q. And what would you do when you left at lunch?

6 A. We had sexual relations.

7 Q. Was it a more casual relationship or more of a
8 committed relationship?

9 A. I don't --

10 Q. Was it more of a casual relationship or was it
11 more of like a monogamous, committed relationship?

12 A. No, it was just casual; more or less a casual
13 type.

14 Q. Did you continue to date Nadine after you met
15 your wife?

16 A. At first, no. When I was released from work
17 release, I quit dating Nadine and started dating my wife
18 because Nadine seemed a little materialistic, and I was
19 in a work release center. I didn't have any material
20 anything, so I shot away from her. And my wife had good
21 work ethics. She wasn't greedy. She wasn't money
22 hungry, nothing like that. She was a very well put
23 together lady.

24 I started dating her and I cut off all
25 relationships with Nadine Davis. When I was released

1 from work release, I moved in with Mary Elizabeth.
2 Within two months of me moving in, Nadine Davis moved
3 right across the street into a house directly across
4 from our apartment and she best-friended my wife, which
5 was then my girlfriend, and she would come over every
6 day for coffee and play footsies under the table and
7 everything else. Then about two, three months later, I
8 got stupid and started seeing her again on the sly.

9 Q. And was that a consensual relationship?

10 A. Yes.

11 Q. At some point, you testified that you found out
12 that she accused you of rape, right?

13 A. Yes.

14 Q. What was your understanding of the possible
15 penalty if you went to trial on that rape?

16 A. That I would get a life sentence and never see
17 daylight again.

18 Q. And how old were you at that time?

19 A. 24.

20 Q. And what was your understanding of the sentence
21 you would serve if you pleaded guilty?

22 A. They did two months and twelve days per year in
23 the state of Arkansas. So my understanding was I would
24 do approximately five years to five and a half years and
25 be released.

1 Q. And did you talk to your -- the possibility of
2 plea versus trial with your lawyer? Did you talk about
3 that with your lawyer at the time?

4 A. Yes.

5 Q. Ultimately, what did she advise you to do?

6 A. To take the five years and go.

7 Q. And did you talk to your wife about what to do?

8 A. Yes.

9 Q. What did she advise you to do?

10 A. To take the five years and go.

11 Q. Did their advice impact you?

12 A. Yes, and I talked to Margaret Richmond as well.

13 Q. And just for the purposes of the record, who was
14 Margaret Richmond?

15 A. Margaret Richmond is the lady I dated for about
16 30 years on and off. We had a open relationship. She's
17 also known as Miss Pumpkin.

18 Q. So you took the -- so you ended up pleading
19 guilty to the rape of Nadine Davis, correct?

20 A. Yes. That's correct.

21 Q. And how long were you actually in custody on
22 those charges?

23 A. 11 months, 29 days. In the state of Arkansas if
24 you're held over 11-29, they have to release you if they
25 haven't taken you to trial.

1 Q. And so did they release you after 11 months and
2 29 days?

3 A. Yes, ma'am.

4 Q. Ultimately, did you receive an active sentence?
5 Did you receive a sentence on those charges?

6 A. Yes, ma'am.

7 Q. And how much time did you do?

8 A. I ended up doing about 14 and a half years.

9 Q. During that time, did you divorce your wife?

10 A. Yes.

11 Q. Why?

12 A. I wanted my wife to be able to go on with her
13 life. I wanted her -- at the time, she was 21 years
14 older than I was. So at the time I was incarcerated,
15 she would have been 45. Everybody in her family had
16 heart problems and didn't live very long. I wanted her
17 to have a chance at life without me tying her down or
18 being an anchor to her.

19 Q. And during that sentence, did you also lose your
20 mother?

21 A. Yes.

22 Q. What happened?

23 A. She shot herself twice in the heart with a
24 .38-caliber pistol.

25 Q. Do you know why she did that?

1 A. Yes. She had a -- her ankles had an operation
2 done on them and she was basically gonna be in a
3 wheelchair for the rest of her life, and she didn't want
4 to live that way.

5 Q. How did that affect you?

6 A. That affected me like it'd affect anybody,
7 especially a mother to a son. That affected me greatly.

8 Q. Do you recall when she passed away?

9 A. That would have been 1994.

10 Q. Now, during that sentence, did you get in fights
11 with other inmates at times?

12 A. Yes, ma'am.

13 Q. And what year were you released?

14 A. Excuse me?

15 Q. What year were you released from that sentence?

16 A. 2003.

17 Q. Where did you go upon your release?

18 A. Wisconsin; Milwaukee, Wisconsin. Oak Creek, to
19 my grandmother's.

20 Q. How long did you stay there?

21 A. I'd say seven, eight months.

22 Q. Why did you leave?

23 A. Because there was no employment there. I did
24 heat, air and electrical, and there was hardly any call
25 for any air conditioning there.

1 Q. So where did you go?

2 A. I went to Arkansas.

3 Q. And what did you do for work there?

4 A. I went to work for Swindles Appliance on Gee
5 Street, and I brought in all the commercial customers
6 that they ever had in the history of the place.

7 Q. And during that time period, did you meet
8 Marshall Ghant?

9 A. Yes.

10 Q. So you were out in 2003. Were you out in the
11 community roughly until 2006 during that time?

12 A. That's correct.

13 Q. Did you register as a sex offender during those
14 times?

15 A. Yes, ma'am.

16 Q. Were you ever accused of failing to register?

17 A. No, ma'am.

18 Q. Were you having sex with women during that time
19 frame?

20 A. Yes, ma'am.

21 Q. Was the sex consensual?

22 A. Yes, ma'am.

23 Q. Other than Linda Burnsed, who we'll get to in a
24 minute, did anyone accuse you of rape during that time
25 frame?

1 A. No, ma'am.

2 Q. How many women do you think you had a sexual
3 relationship with between 2003 and 2006?

4 A. I'd say maybe 20.

5 Q. And so did you take any precautions during that
6 time period to protect yourself against future rape
7 charges after being released from that 12 and a half or
8 14 and a half year sentence?

9 A. Yes, ma'am. I recorded every sexual encounter I
10 had on audiotape. I kept the audiotape for six months,
11 and if nothing came up, I burned it in a burn barrel.

12 I time-dated the tapes by the radio station that
13 was on. I used to do work at radio stations, and so I
14 knew that they have a specific time slot. And this time
15 slot tells you, like, Joe's Plumbing, Mike's Heating and
16 Air, and what songs play between. No two days are alike
17 because they don't advertise the same time slots. So I
18 took these time slots and I knew where they played, so I
19 would mention what radio station was playing; and then
20 once it did a advertising and a song, it set the time
21 exactly for that time frame.

22 And so that's how I would time-date all the tapes
23 where it could be traced and tracked because they keep a
24 record of who pays what advertising, and the advertising
25 absolutely locks in the time.

1 Q. And so --

2 A. And the date.

3 Q. I'm sorry. Continue.

4 A. Go ahead.

5 Q. No, I'm sorry. I cut you off. Continue.

6 A. No, that's fine.

7 Q. In 2006 were you accused of rape again?

8 A. Yes, ma'am.

9 Q. And what was the victim's name?

10 A. Linda Burnsed.

11 Q. Had you been sleeping with her prior to this rape
12 accusation?

13 A. Yes, ma'am.

14 Q. Had you had -- why did you go over to her house
15 the night that she accused you of rape?

16 A. I was going over to break up with her. This is
17 gonna be a little bit detailed.

18 But basically what had happened was the Jonesboro
19 Police Department came to my place of business, which
20 was Swindles Appliance, and they told the owner that
21 they were gonna post my picture in the newspaper and his
22 business and list it as me being a sex offender working
23 for him, that he had two weeks to fire me or to get rid
24 of me and it wouldn't take place. So he fired me. And
25 they posted it in the newspaper, and they posted it on

1 the courthouse window, and they posted it around for
2 like four city blocks around my apartment house. This
3 was a new policy that they just put into law in effect.

4 So Linda Burnsed seen the picture that was on the
5 courthouse window of my picture. So she came over like
6 three or four days later and she said, "Hey, we don't
7 have a problem with this. I understand you had a past.
8 We don't have a problem with this. We can continue to
9 date." However, the relationship turned to the point
10 where she felt like she had something over my head, and
11 it became to the point where she was kind of -- kind of
12 -- that the balance was no longer a balance. The
13 relationship had turned toxic.

14 And so me and my landlady talked about it, and
15 she told my landlady that -- she thought she was my
16 sister, my landlady -- Linda Burnsed thought my landlady
17 was my sister, so she knitted her daughter a shawl for
18 Christmas that year and gave it to her. And she told
19 her during that time that me and her were getting
20 married. Me and her had never talked about marriage.
21 Me and her had never talked about anything besides being
22 sexual friends, and that was it.

23 And so Jeannette told me, that's the landlady,
24 she told me, she said, "Hey, you need to break up with
25 her because it's getting toxic." I said, "I know, I

1 know, that's what I've been telling you." She said,
2 "But don't do it before the holidays." She said, "Wait
3 until after the holidays."

4 So she went to a spy shop in Memphis, Tennessee,
5 and got me a ink pen that digitally recorded for four
6 hours and told me to carry it with me for protection,
7 but I was afraid that a digital recording couldn't be
8 checked and verified, so I didn't want to take a digital
9 recording, and I took a magnetic one that was 90 minutes
10 long.

11 So I went over there to break up with her, and I
12 said on the tape, I'm on the back side of Harrisburg,
13 Arkansas, this is January whatever it was, 6 or
14 whatever, and I'm going here to break up with Linda
15 Burnsed. I have this tape for my protection. I kept
16 the recorder on. I went into her house and -- I said
17 hey, I'm listening to Magic 105 radio station, this
18 currently what's playing on the radio. You can hear me
19 walking through the gravel.

20 She opens the door. She has the exact same radio
21 station on with the exact same everything. That's how
22 the Arkansas State Crime Lab was able to certify it as
23 unaltered, original, and time and date stamp the tape.
24 So they verified all that.

25 So I told her I was breaking up with her, and she

1 said, "Well, can we still be 'F' buddies?" And I said,
2 "No, I don't think that'd be a good idea." I told her I
3 was entering into a relationship with another woman,
4 which wasn't true. I was just telling her that so that
5 we could break it off and I'd have a reason why we
6 needed to break it off. I didn't want to go in and say,
7 "Hey, I feel like this is becoming toxic," or anything
8 else. I was trying not to upset her.

9 And she said, "Well, can we be 'F' buddies?" And
10 I was like, "No, no, that wouldn't work out, that
11 wouldn't give this a chance." She said, "Well, can we
12 have sex one more time?"

13 The idiot that I am, I got the recorder there and
14 I figured this is for my protection. I had been smoking
15 weed and I'd been drinking alcohol and I didn't have a
16 good sense, and I agreed to have sex with her.

17 During the sex -- do I need to go forward or do
18 you want to...

19 Q. I was just gonna ask if the sex was consensual.

20 A. That's -- it was absolutely consensual.

21 Q. And you were arrested, right? After that?

22 A. That's correct.

23 Q. Did you ultimately plead guilty to that -- to a
24 charge --

25 A. Yes, ma'am.

1 Q. -- in that case? Do you recall if you pled
2 guilty to rape or attempted rape?

3 A. Attempted rape.

4 Q. And what was the plea deal that was offered?

5 A. Unsupervised probation for ten years. As long as
6 I didn't get a felony within ten years, I had nothing to
7 worry about, I can walk out the door.

8 Q. Did you talk to your family at the time about --

9 A. Yes. My sister was there, my nephew was there.
10 And Kevin Jester, which was a customer of mine that owns
11 the bee company, the largest bee company in the state of
12 Arkansas, was there.

13 Q. So did you have to do any time with that plea
14 deal?

15 A. No, ma'am, other than what I'd done before they
16 released me, which was the waiting for a hearing, which
17 was 11-29.

18 Q. So you had done 11 months and --

19 A. Yes, ma'am.

20 Q. -- 29 days on that charge? If the deal that was
21 on the table involved additional prison time, would you
22 have taken it?

23 A. No, ma'am. They offered that and I turned it
24 down flat.

25 Q. And so you had 120 months of unsupervised

1 probation. Is that what your understanding was?

2 A. Yes, ma'am.

3 Q. And you stayed in the community, right? From --

4 A. Yes, ma'am.

5 Q. -- 2007 until 2010? What sentence were you
6 serving when the Adam Walsh 4248 certificate was filed?

7 A. I was serving failure to comply -- failure to
8 update a registry.

9 Q. And is that a federal charge?

10 A. Yes, ma'am.

11 Q. What state were you charged in?

12 A. The state of Missouri.

13 Q. And did you go to trial?

14 A. Yes, ma'am.

15 Q. Why did you go to trial?

16 A. Because it was my understanding I didn't have to
17 deregister when I left Missouri. It was also my
18 understanding that I didn't have to register if I didn't
19 stay anywhere over 72 hours. And anyplace that I ever
20 worked that I had to stay over 72 hours, I always
21 notified the local law enforcement -- Mississippi
22 County, Craighead County, Poinsett County -- where I
23 was, where I was gonna be working, and how long I
24 expected to be there. And if anything changed, I'd
25 notify them.

1 Q. So between 2007 and 2010, did you register?

2 A. Yes, ma'am --

3 Q. Up until your charge that you failed to register?

4 A. Yes, ma'am.

5 Q. And were you ever charged in Arkansas with
6 failure to register?

7 A. No, ma'am.

8 THE COURT: I want to be clear, make sure I
9 understand that. So you were charged with leaving
10 Missouri and not stating that you were leaving, but you
11 did register in Arkansas when you moved there?

12 THE WITNESS: No, I did not register in
13 Arkansas when I moved there because my understanding was
14 as long as I didn't stay in that one spot for 72 hours,
15 I didn't have to register. And that's what Arkansas law
16 reads, is if I'm not there 72 hours I don't have to
17 register. And I worked commercial heating and air in
18 four states, so I was never in one spot. Most service
19 calls last less than a day.

20 THE COURT: So you didn't have a home? You
21 were moving from place to place --

22 THE WITNESS: Yes, that's correct --

23 THE COURT: -- to do the work? Where were
24 you living?

25 THE WITNESS: At hotels -- the Jester Bee

1 Company kept a apartment that I could use. The Super 8,
2 which was Mr. Patel, kept a room for me at all times.
3 Even if I wasn't working I could stop by and stay in.

4 The Garden Inn there in Blytheville kept a
5 room for me at all times anytime I was there. Lucky's
6 Market had four apartments in the back that any one of
7 his workers or anybody could use at any time. I could
8 also use his home anytime I wanted to.

9 Larry's Grocery, Danny and them would take
10 me to their house. I'd spend a night over at their
11 house. Customers, they cut down on the cost because I
12 didn't have to charge them for the housing to run the
13 service calls.

14 Marshall Ghant kept three or four houses for
15 me I could use wherever I was at, which was Marked Tree,
16 Jonesboro, Harrisburg, wherever. They had a lot of real
17 estate property around there, so I could stay there as
18 well.

19 THE COURT: So you kept most of your stuff
20 in the car and you were moving from place to place --

21 THE WITNESS: Yeah, trucks. I had a big
22 service truck with utility bed on it with all the
23 toolboxes built on. So, I mean, it was -- and it had a
24 front and back seat. It was a king cab, so the back
25 seat was made into like a -- basically like a semitruck

1 sleeper, is what it was made into. The back seat was
2 taken out and the bed was put in there, which was a twin
3 bed.

4 THE COURT: Okay. Thank you, sir.

5 BY MS. COSTELLO:

6 Q. Mr. Kozohorsky, you also had a 2009 charge, I
7 believe, for failure to report. Do you recall that?

8 A. Yes, ma'am.

9 Q. Were you charged with failure to register there
10 or was it that you didn't show up to -- within the time
11 frame in order to report where you were living?

12 A. Yes, I didn't show up within the frame. What
13 they did is I would pay 30 days rent for a place where I
14 did four of their clubs, and I did their heating and
15 air, four clubs, and they had apartment houses. And
16 they had by the week and they had by the month. I paid
17 them for a month, and he only counted it for four weeks.
18 And Detective Sutton charged me on the 28th day, which
19 would have been -- he started charging me, I guess, on
20 the 29th day. After the 28th day was over with, he put
21 a charge on me immediately that I was no longer living
22 there.

23 When I called my landlord about it, he told me
24 that I was still there, so I don't know what the
25 contention was there.

1 But then when I got ready to go to court on it,
2 they just ran it all together and they got me for the
3 one that was previous. So they never brought that one
4 back up.

5 Q. So how long have you been in custody,
6 continuously?

7 A. Thirteen years.

8 Q. And how many write-ups have you had during that
9 time period?

10 A. Absolutely none.

11 Q. There was some testimony on your direct
12 examination about some pictures that you received.

13 A. Yes, ma'am.

14 Q. If I could ask you to turn in the exhibit binder
15 in front of you to No. 21, and I'll ask you to turn to
16 the third page. It says BOP_KOZO_1224 on the bottom.
17 Let me know when you're there.

18 A. Okay.

19 Q. Where it says "Comments," it starts "The
20 mailroom." Can you read that?

21 A. The mailroom received a envelope with pictures in
22 it for Mr. Kozohorsky and requested that SOMP review the
23 pictures. Seven of the pictures were depicted models
24 posing as adolescent female and depicted nudity. These
25 pictures were confiscated and will be sent to property.

1 Q. And what is the date up there on that?

2 A. 5/17/2016.

3 Q. Do you recall this incident?

4 A. Yes, ma'am. Absolutely.

5 Q. And did you request those pictures?

6 A. No, ma'am.

7 Q. And does that note say anything about bondage?

8 A. About what?

9 Q. Bondage.

10 A. No, ma'am. What had happened was -- I got his
11 address over there, right there, if you'd like to have
12 it. Mr. Price that run a company that's called "For
13 Your Eyes Only" took and -- he got upset with the BOP
14 for some censorship that they had done to his company.
15 So everybody on his mailing list he decided to send
16 these photographs to. Well, there's about 60 of us on
17 the Marianna compound or complex, whatever you want to
18 call it, that received these photographs from Mr. Price,
19 unsolicited, unasked for, unpaid for, everything. He
20 just sent them in. His address is right over there with
21 his e-mail address.

22 He later gave a public apology in the prison
23 resource book, or whatever. He gave a public apology,
24 and I don't know if he started back working
25 relationships with the BOP or not. But I never ordered

1 any pictures from that company.

2 Q. And you never got written up for this.

3 A. No.

4 Q. Okay. Now, you were in state custody in Arkansas
5 between 1991 and 2003. Right?

6 A. Yes, ma'am.

7 Q. Did they have female guards in the state of
8 Arkansas?

9 A. Oh, yes, ma'am. Their percentage is probably 60,
10 70 percent female to about 30 to 40 percent males.

11 Q. So were you around female guards during that
12 prison sentence?

13 A. Continuously.

14 Q. And did it ever cross your mind to rape one of
15 them?

16 A. No.

17 Q. Did you ever fantasize about raping one of them?

18 A. No.

19 Q. What about this current federal sentence? Have
20 there been any female guards at any of the facilities
21 that you've been at?

22 A. At every one of them.

23 Q. And did you ever try to rape any of those female
24 guards --

25 A. No, ma'am.

1 Q. Did it ever cross your mind?

2 A. No, ma'am.

3 Q. Did you ever fantasize about it?

4 A. No, ma'am.

5 Q. When did your federal sentence expire?

6 A. Which one? Did two separate ones. My first
7 release date was in 2020. And then, all of a sudden,
8 they took 27 months from me without a hearing or
9 anything and extended it to 2022 of March.

10 Q. So March of 2022?

11 A. Yes, ma'am.

12 Q. So at that point, where did you go once your
13 sentence expired?

14 A. To Maryland Unit.

15 Q. And what's the Maryland Unit?

16 A. It's a sex offender civil commitment unit.

17 Q. And what prison is it at?

18 A. Butner, North Carolina.

19 Q. So you've been in the civil commitment unit since
20 March of 2022?

21 A. Yes, ma'am.

22 Q. Did you join the treatment program?

23 A. Yes, ma'am.

24 Q. Are you presently in it?

25 A. Yes, ma'am.

1 Q. Why did you join it before you --

2 A. To show the Court that I'm willing to do whatever
3 needs to be done. I have treatment that's assigned to
4 me when I'm released, so I was gonna show the Court that
5 I'm willing to, you know, go to sex offender treatment,
6 whatever it takes.

7 Q. So if you're released, where do you plan to live?

8 A. In Jonesboro, Arkansas.

9 Q. And do you have a term of supervised release from
10 your --

11 A. Yes. It's a lifetime supervision.

12 Q. Do you know any of the terms?

13 A. Yes. In our area they -- you have to have a
14 phone with you at all times, and they track you through
15 this phone. If they call you, you have one hour to show
16 up for a UA, or whatever, and if they tell you -- if
17 they call you and they say activate your camera, you
18 have to activate your camera. They tell you to do a
19 walk-through, you have to do a walk-through. They tell
20 you to turn right, you turn right. They tell you to
21 turn left, you turn left. They tell you to go outside
22 and put it on the yard, you do whatever they tell you to
23 do.

24 Q. Do you know if you have to do sex offender
25 treatment?

1 A. Yes, ma'am.

2 Q. Do you know if you're required to register?

3 A. Yes, ma'am.

4 Q. Do you plan to comply with the terms?

5 A. Yes, ma'am.

6 Q. So you talked about how you're currently serving
7 a sentence for failure to register. Do you plan to
8 register in the future?

9 A. Yes, ma'am.

10 Q. You had previously said that you didn't believe
11 you had to register if you were in a place less than 72
12 hours.

13 A. That's correct, ma'am.

14 Q. What is your plan in the future if you're in a
15 place less than 72 hours? Do you believe that you would
16 need to register?

17 A. If I -- if I move there. But if I was -- I don't
18 know how that would work. I'm expecting my federal
19 probation officer to explain that to me. But if I'm
20 registered, let's say, Jonesboro, Arkansas, and I went
21 to, say, Blytheville, which is Mississippi County, and I
22 was only gonna work for a day or two, by state and
23 federal law, I wouldn't have to register. So I don't
24 know. I mean, if that was a condition of my, you know,
25 my probation parole and they said hey, even if you're

1 there for ten hours you need to -- then I would do so,
2 if that's what they tell me I need to do.

3 Q. So are you saying you're gonna check with your
4 probation officer?

5 A. Right. Whatever he says to do, I'm gonna follow
6 his instructions.

7 Q. And what do you plan to do for work?

8 A. I do heat and air and electrical. I plan to go
9 to work for Marshall Ghand and his son. They own quite
10 a bit of real estate.

11 Q. Has he said that he will employ you?

12 A. Absolutely.

13 Q. Have you maintained contact with him during your
14 prison sentence?

15 A. Weekly.

16 Q. And when was the last time you talked to him?

17 A. Wednesday.

18 Q. Has he offered you a place to stay if you're
19 released?

20 A. Absolutely.

21 Q. The government asked you some questions about
22 using different names. Do you recall that?

23 A. Yes, ma'am.

24 Q. Have you previously -- what's your given name?
25 What's your biological name?

1 A. James Daniel Kozohorsky.

2 Q. And what do most people call you?

3 A. J.D.

4 Q. The government said that you've also used the
5 last name of Anderson.

6 A. That's correct.

7 Q. Who's Anderson?

8 A. That is my stepfather.

9 Q. And did you ever adopt his name for a period of
10 time?

11 A. No, but when I went to school I had to use his
12 name.

13 Q. Okay. The government also asked you about the
14 last name of Larson.

15 A. Yes. That was my stepdad as well. When I went
16 to school I used his name.

17 Q. And so were these aliases that you used to try to
18 avoid detection?

19 A. No, ma'am. They were school names for going to
20 school. They were what were on the school registry and
21 what I was told by my mother to use.

22 Q. Okay. Just a few more questions, J.D. Is a
23 woman refusing to have sexual intercourse with you
24 arousing to you?

25 A. No, ma'am.

1 Q. Now, you testified on direct examination and in
2 your deposition that you masturbate maybe a couple or a
3 few times a month.

4 A. Yes, ma'am.

5 Q. Is that a change from the past?

6 A. Yes, ma'am. It would have been like three, maybe
7 four times a week.

8 Q. And when did the change sort of happen?

9 A. Probably in my late 40s.

10 Q. When you do masturbate, what do you think about?

11 A. With me it's more mechanical than it is thoughts,
12 and it always has been my entire life. It's more
13 mechanical and the feeling. It's not actually the
14 thoughts.

15 Q. Are you ever gonna rape another woman?

16 A. No, ma'am.

17 Q. Why not?

18 A. Because that's just not who I am.

19 Q. Do you believe that it's acceptable to rape a
20 woman?

21 A. No, ma'am, not under any circumstances. I ruined
22 one life doing that.

23 MS. COSTELLO: Nothing further, Your Honor.

24 THE COURT: Redirect, counsel.

25 MS. PRATESI: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. PRATESI:

Q. Mr. Kozohorsky, you talked about your wife, Mary Elizabeth, correct?

A. That's correct.

Q. Did she have any nicknames?

A. Libby.

Q. Okay. And I believe you mentioned another name for Margaret as well.

A. Yes.

Q. And can you remind me what that was?

A. Pumpkin.

Q. Thank you. And you testified about the state of Arkansas having a policy that you can only be held in custody for 11 months and 29 days. Is that right?

A. That's correct.

Q. And that's because the prosecution theoretically would have had enough time within that year to prosecute you, right?

A. That's correct.

Q. So with your case where you were accused of the rape of Linda, you were held for almost a year. Is that correct?

A. That's correct.

Q. And is it your understanding that the prosecution

1 was gonna have to release you or do something at that
2 time?

3 A. Yes.

4 Q. And that's why they give you a plea deal,
5 correct?

6 A. No, ma'am.

7 MS. PRATESI: Nothing further, Your Honor.

8 THE WITNESS: They release you to the
9 public. They don't have to give you any type of deal.
10 I was still scheduled for jury trial. It was on the
11 morning they decided to pick the jury when I played the
12 tape from a two-story window that -- the prosecutor
13 heard the tape as clear as day from a block and a half
14 away and came straight up there and tried to make a
15 deal, multiple deals.

16 MS. PRATESI: I have nothing further, Your
17 Honor.

18 THE COURT: Thank you.

19 MS. COSTELLO: Nothing further, Your Honor.

20 THE COURT: Thank you, Mr. Kozohorsky. You
21 may step down.

22 MS. COSTELLO: May we just have a brief
23 minute to make sure that Mr. Kozohorsky's feeling all
24 right? Thank you.

25 THE COURT: We can take a ten-minute recess

1 for everybody's comfort. It's midmorning. We'll come
2 back.

3 (Proceedings recessed at 11:02 a.m.)

4 (Proceedings recommenced at 11:13 a.m.)

5 THE COURT: All right. Back on the record.
6 United States may call its next witness.

7 MR. BREDENBERG: Thank you, Your Honor. The
8 United States calls Dr. Mark Hastings.

9 THE COURT: Good morning, Dr. Hastings.

10 THE WITNESS: Good morning.

11 THE CLERK: Please place your left hand on
12 the Bible, raise your right hand, and state your name
13 for the record.

14 THE WITNESS: Dr. Mark Hastings.

15 (The witness was placed under oath.)

16 MR. BREDENBERG: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. BREDENBERG:

19 Q. Good morning, Dr. Hastings.

20 A. Good morning.

21 Q. Please state and spell your name for the record.

22 A. Mark Hastings. M-A-R-K, H-A-S-T-I-N-G-S.

23 Q. And where are you currently employed?

24 A. Employed full-time as a court psychologist in the
25 county of Loudoun. I also have a private practice doing

1 forensic evaluations around the mid-Atlantic, primarily
2 sex offender work.

3 Q. And your Loudoun County job, is that also
4 conducting forensic evaluations?

5 A. Yes, of all kinds. I'd say probably 50 percent
6 sex offender, 50 percent competency/sanity/risk
7 assessment.

8 Q. Okay. And I may ask you to flip through the
9 binder a few times during your testimony, so if you can
10 kind of get that in a place that you can do that. Can
11 you flip to tab 5, please?

12 A. Yes.

13 Q. That's your CV, right?

14 A. Correct.

15 Q. All right. And does that appear to you to be
16 accurate?

17 A. Yes.

18 Q. Okay. And then if you flip back one to
19 Government Exhibit 4, what is that?

20 A. A copy of my report in this case.

21 Q. Okay. So you are, then, familiar with
22 Mr. Kozohorsky, correct?

23 A. I am.

24 Q. And that's because you were appointed by the
25 Court to conduct a forensic evaluation?

1 A. Correct.

2 Q. And what was it your understanding that you were
3 to look at in the course of your evaluation?

4 A. For these it's usually the same. Review all the
5 records that are available; meet with the inmate;
6 interview the inmate; if testing is needed, do
7 psychological testing; score actuarial instruments;
8 consider relevant risk factors, protective factors, and
9 then wind up with an opinion about sexual dangerousness.

10 Q. Okay. I'm just gonna elaborate on a few of those
11 things. So you did have an in-person interview with
12 Mr. Kozohorsky?

13 A. I did a video interview with him. At the time,
14 it was still COVID days.

15 Q. Okay. And was it just one?

16 A. Yes.

17 Q. And how long was that interview?

18 A. Approximately four hours on September 13th, 2021.

19 Q. Okay. And did you then ultimately prepare a
20 report?

21 A. I did.

22 Q. And that's Government Exhibit 4?

23 A. Yes.

24 Q. And that report was completed on September 20th,
25 2021?

1 A. Yes.

2 Q. Okay.

3 A. Actually, there are two different interview dates
4 here. I'm pretty sure it's September 8th, actually, is
5 the correct date, on the front.

6 Q. Okay. Okay. So the other one was --

7 A. On the second page it's listed again with, for
8 some reason, a date five days later, which is not
9 correct.

10 Q. Okay. Now, you mentioned that you normally
11 review all documents that are available. Did you have
12 certain documents that were available for you in this
13 case?

14 A. Yes.

15 Q. And did that include his criminal history
16 documents?

17 A. It did.

18 Q. Okay. And did it also include BOP records?

19 A. It did.

20 Q. And then you said that you usually do tests or
21 score things. Did you score actuarials in this case?

22 A. I did score actuarial instruments, yes.

23 Q. And what were those?

24 A. The Static-99 and the Static-2002R.

25 Q. Okay, and we'll talk about those in a little bit

1 more detail later. And then did you look at dynamic
2 risk factors here?

3 A. I did.

4 Q. And did you consider protective risk factors?

5 A. I did.

6 Q. Since the time that you prepared your report, did
7 you get any additional information that you were able to
8 consider?

9 A. Yes.

10 Q. And what was that?

11 A. Well, I got new records in 2022 and some more
12 records in 2023 and more records just a few days ago
13 when it was apparent that I didn't have a couple of the
14 experts' reports.

15 The main records in those were updated BOP
16 records, some things from the CTP program involvement,
17 the two other experts' from the defense side reports,
18 and more detailed police reporting of some of the
19 offenses in this case, and some letters written -- or at
20 least one letter written by Mr. Kozohorsky to a woman on
21 the outside.

22 Q. Okay. And did you also get to review -- did you
23 have an opportunity to review his deposition --

24 A. I did.

25 Q. -- transcript?

1 A. Yes. That was also one of the records I think I
2 got in 2022.

3 Q. Okay. All right. And we'll kind of get to those
4 during some of the questioning here.

5 In the course of your evaluation, did you
6 determine whether Mr. Kozohorsky actually has either
7 committed or attempted to commit sexually violent
8 conduct in his history?

9 A. Yes.

10 Q. And what was your conclusion?

11 A. Yes. He has been convicted of and charged with
12 and alleged to have committed a range of sexually
13 violent offenses.

14 Q. Okay. And can you kind of summarize those
15 offenses for the Court, please.

16 A. Yes. In 1987, when he was 22 years old, he had
17 an aggravated assault against Sandra L. that we heard
18 about this morning. That charge, it looks like, was
19 nol-prossed and a deal to plead guilty to a rape charge
20 in January 15th of '87, which was four days after the
21 other offense, that was of Rhonda H., the gas station
22 offense.

23 In '89 November, there was another rape charge
24 against Nadine. This is the one who is a friend of his
25 wife. That was a guilty conviction.

1 In 2006 there was the four rape charges and
2 attempted rape charges that he talked about just
3 recently in his testimony. And then when he came back
4 on the -- or when he came to the federal system on the
5 failure to register, there were allegations of another
6 physical sexual assault that did not lead to charges.

7 Q. And that was Christine?

8 A. Yes.

9 Q. Okay. And so based on your tally, did you
10 determine that there were five different victims?

11 A. Yes, at least.

12 Q. Okay. And what do you mean by "at least"?

13 A. There were other references in the record to past
14 credible allegations of additional sex offenses beyond
15 what was available at that time in the records.
16 Specifically, there was a mention that several of his
17 victims were teenagers, or in the teen range. And at
18 the time of that report, there really was only this --
19 the 18-year-old victim at the gas station. So if there
20 were other teen victims, they were not formal charging
21 events that are available in these records.

22 Q. Now, in your report, you detail those offenses.
23 Was that based on the information in the presentence
24 investigation report and other records, or what?

25 A. Yes, either presentence report or police reports

1 or both.

2 Q. Okay. Now, to be clear, with regard to the first
3 offense, the first, kind of, conviction, you said there
4 were two victims connected with that? Is that right?

5 A. Yes.

6 Q. Okay. One was January 11th, 1987?

7 A. Yes.

8 Q. That was a person by the name of Sandra? Is that
9 right?

10 MS. COSTELLO: Objection; leading.

11 THE COURT: It's in the report. This is a
12 bench trial. I'll be permissive on leading, for keeping
13 things moving in the right direction. If it gets out of
14 hand, we'll stop it. Thank you, counsel.

15 THE WITNESS: Yes.

16 BY MR. BREDENBERG:

17 Q. So Sandra was the first victim. And based on the
18 records, was that allegation nol-prossed by the
19 government?

20 A. Yes. That's my understanding.

21 Q. And is it your understanding -- what was your
22 reason -- your understanding that the reason that it was
23 nol-prossed?

24 A. It was because there was a plea of guilty to the
25 second charge four days later.

1 Q. So they were combined together --

2 A. Yes.

3 Q. -- essentially. Okay. And the second -- well,
4 with regard to the Sandra allegation, what happened
5 there?

6 A. The account is actually split up into two
7 sections, which is partly confusing and part based on
8 what the mother says in between the two descriptions.

9 But essentially, he showed up at the house --
10 this was the daughter, I guess, of the mother -- came
11 in, asked to use the bathroom, essentially came out of
12 the bathroom, had a knife, put that to her neck, was
13 cursing at her. There was a struggle. She grabbed a
14 Coke bottle to try to defend herself. At some point he
15 had her in a headlock, they struggled, she bit him, he
16 hit her in the face, put his hand over her mouth. She
17 was later able to get her mouth free and scream, at
18 which point he backed away, and there was a back and
19 forth of him calling her crazy and her calling -- him
20 calling her crazy and vice versa.

21 In between there, the mother interjected and had
22 stated that there had been a -- he had come over a
23 couple of months earlier and had -- and tried to come on
24 to her. And so it wasn't clear to me if that was some
25 reference to a separate offense on the mother or a

1 separate attempt to try to have some sexual relations
2 with her daughter. But based on the time frame she
3 gave, it would have actually been, like, November of
4 '86.

5 Q. Okay. Now, moving on to the next one, what was
6 the next rape that he was charged with and convicted of?

7 A. The next one would have been November of '85 --
8 or '89.

9 Q. I'm sorry. Let's go back. Was Rhonda the second
10 person?

11 A. Yes.

12 Q. Okay. And what happened with the Rhonda
13 situation?

14 A. Rhonda was somebody he knew from the gas station.
15 He'd done some, I guess, HVAC work there and had spoken
16 with her on several occasions, tried to ask her out,
17 according to her, and she had rebuffed that.

18 At some point he came back to the -- he'd been
19 there, it looks like from reading her written account of
20 things, that he had been to the store a couple of times
21 that day, came back later. At some point when she went
22 to the bathroom, he went and locked the front door to
23 the gas station. When she was about to come out of the
24 gas station -- or out of the bathroom, he was standing
25 there and pushed her back into the bathroom, began

1 cursing at her, threatened to punch her in the face,
2 said he had his fist up towards her when she was
3 resisting, commented that he was doing this because he
4 liked her, and then apparently threatened to anally
5 sodomize her if she didn't stay quiet and quit resisting
6 the vaginal assault.

7 Q. And was that description of the assault and the
8 rape based on information in police reports?

9 A. Yes.

10 Q. Okay. And could I direct you to Government's
11 Exhibit No. 16, please.

12 A. Yes.

13 Q. Okay. And is that one of the police reports that
14 you are referencing with regard to Rhonda?

15 A. Yes.

16 Q. Okay. And in that, do you recall that the victim
17 had indicated that he had sort of asked her for sex on
18 previous occasions and she refused him several times?

19 A. Yes. I do recall there was references of him
20 making sexual propositions previously.

21 Q. And also just for the record, you're calling this
22 a gas station. In looking at that, is it possible that
23 this is a store called Bargains Unlimited?

24 A. That's the name. My memory is that when we spoke
25 about this, he kind of presented it as a gas station

1 type facility.

2 Q. All right. And then you heard his testimony
3 today, correct?

4 A. Yes.

5 Q. And he did, in fact, admit that he did --
6 essentially either admitted or acknowledged that he most
7 likely did all of the stuff that was alleged against him
8 in that case, correct?

9 A. Yes.

10 Q. Okay. All right. Moving on to the next
11 conviction, that one was November 15th, 1989?

12 A. Yes.

13 Q. Okay. And do you know who the victim was in that
14 case?

15 A. Yes. This was the friend of his wife, Nadine.

16 Q. Okay. And how long, if you know, was it after he
17 got out of prison before he was involved in this rape?

18 A. Approximately eight months. He was released on
19 March 17th, '89, and this offense was November 15th,
20 '89.

21 Q. Okay. And what was the sort of setting situation
22 involving this rape?

23 A. She came to his --

24 MS. COSTELLO: Judge, I'm just gonna object
25 to an expert testifying about the facts of the offense

1 which are -- the records of which are in evidence. He's
2 not being asked about his opinion about the meaning of
3 the facts. He's just being asked to recount the facts.
4 He's testifying as if they are facts, and I'm just
5 objecting to that.

6 THE COURT: I understand the objection. I'm
7 also going to note that they're hearsay, and I
8 understand that they're hearsay. The expert's allowed
9 to evaluate hearsay. And if the expert's opinion is
10 based on the fact that the hearsay must be true, that
11 does go to the weight of his opinion, one way or the
12 other. If it turns out the judge doesn't find them to
13 have been established and his expert opinion is based on
14 them as if they are true, that's to the detriment of the
15 opinion as opposed to making the opinion more credible.

16 So I understand. So it's helpful to the
17 Court to understand the basis for his opinion. You may
18 continue, counsel.

19 MR. BREDENBERG: Thank you, Your Honor.

20 BY MR. BREDENBERG:

21 Q. So what is it your understanding that the
22 circumstances surrounding the Nadine rape were?

23 A. The understanding I got from the police report
24 and the presentence report was that he went to the
25 victim's house, knocked on the door, she let him in, he

1 asked for a cup of coffee. At one point he got up,
2 walked to the bathroom. The victim got up, followed
3 him, asked him what he was doing. He then grabbed her
4 by the hair, choked her, said he would kill her. There
5 was some struggle, she said, "Please don't do this, this
6 is rape, you'll go to jail for this." He responded with
7 "It will be worth it to get a piece of you," quotes.

8 He also said that he had been wanting her for a
9 number of years and if he had to rape her to get her, he
10 would. He threw her on the bed and then had vaginal
11 intercourse with her.

12 Q. And that information that you're relying on, was
13 that based on official law enforcement records, as far
14 as you know?

15 A. Yeah, it was an Osceola Police Department report
16 of the account.

17 Q. Okay. Okay. Moving on to the next conviction,
18 what was that one, if you recall?

19 A. It was the attempted rape conviction.

20 Q. Is that -- the victim's name Linda?

21 A. Yes.

22 Q. Okay. And that occurred when?

23 A. January of 2006.

24 Q. Okay. And what did you base your facts on for
25 that particular charge?

1 A. There was minimal detailed information at the
2 time I did the report on this offense. It was primarily
3 the presentence report and then Mr. Kozohorsky's account
4 of the offense.

5 Q. Did you subsequently come to some additional
6 information in your review of your records that gave
7 more details --

8 A. Yes.

9 Q. -- into the -- okay. And as a result of your
10 review of all of that, what was your understanding of
11 what happened there?

12 A. He went to the woman's home. At some point he
13 said trying to break up with her. That wasn't clear to
14 me from the police report. But engaged in sexual
15 intercourse with her, or tried to engage in sexual
16 intercourse with her, and then began to anally assault
17 her.

18 His version of the offense was very lengthy,
19 involved multiple breakings and fixings of the bed and
20 multiple changes of condoms. But essentially the
21 victim's account was that he anally raped her and
22 stopped it several times and replaced the condom and
23 continued to do that, and then at one point used Icy Hot
24 as well -- as a lubricant -- and inserted his fist into
25 her vagina during the assault.

1 Q. And he had a different story, right?

2 A. Yes.

3 Q. And he testified to a little bit of that today?

4 A. Yes.

5 Q. Okay. Moving on to the last allegation that we
6 have or that has been talked about so far. That was
7 Christine I'm referring to. Do you know when that
8 allegation occurred?

9 A. It would have been in -- it was August 25th. She
10 made the allegation that from the 19th to the 24th of
11 August that he had physically and sexually assaulted
12 her.

13 MS. COSTELLO: And, Judge, this is the
14 document that we've objected to as hearsay.

15 THE COURT: It's Government Exhibit 10.

16 MS. COSTELLO: Yes.

17 THE COURT: Okay.

18 MS. COSTELLO: And I'm happy to explain the
19 basis, if the Court would like to hear it at this time.

20 THE COURT: Go ahead. This is the one --
21 first, the witness's testimony is based on the review of
22 the Exhibit 10. Is that correct?

23 THE WITNESS: Yes.

24 THE COURT: Okay. I'll hear your objection.

25 MS. COSTELLO: So, Your Honor, many years

1 ago in the case of United States versus Vernon Wood, the
2 Fourth Circuit upheld over a respondent's objection the
3 inclusion of documents, police reports that contained
4 hearsay. The respondent objected they were hearsay, and
5 the Fourth Circuit said, you know, "These were in the
6 presentence report, the presentence report is admissible
7 as an official record, and so we're gonna allow the
8 police reports in."

9 But this incident, Government Exhibit 10, it
10 is not something that was -- that had already happened
11 and been determined to be reliable in the presentence
12 report. In fact, Mr. Kozohorsky objected to the use of
13 this conviction to enhance -- I'm sorry -- this
14 allegation to enhance his sentence at the sentencing
15 hearing, and the government conceded that the
16 enhancement didn't apply. And so to rely on this and to
17 allow this -- not just to rely on it but to allow it
18 into evidence, where it is hearsay that has never been
19 found to be true by any sort of judicial body, does
20 violate the hearsay rule because it is not based on the
21 same argument that the Fourth Circuit upheld in the Wood
22 case.

23 THE COURT: All right. Thank you, counsel.
24 I understand the objection. The rules of evidence are
25 relaxed in a proceeding of this kind that's taking place

1 before the Court, not before a jury. I understand the
2 hearsay objection as an admissibility objection but also
3 as a weight objection. It goes to weight, not to
4 admissibility. It's properly admitted before this
5 Court. The Court will hear all appropriate argument
6 regarding weight at the appropriate time. You may
7 proceed.

8 THE WITNESS: Just to clarify, Your Honor, I
9 assumed that Exhibit 10 was in reference to the
10 presentence report that's in my report. It turns out
11 Exhibit 10 is the police report.

12 THE COURT: Right, it's the police report --

13 THE WITNESS: I didn't have the police
14 report --

15 THE COURT: Okay.

16 THE WITNESS: -- at the time that I wrote
17 the report. I just had the presentence report. So I
18 have since reviewed it; but at the time I wrote the
19 report, it was not actually based on Exhibit 10.

20 THE COURT: Okay. That's helpful in terms
21 of understanding it. Were you aware that he had
22 successfully objected to and had that excluded from his
23 presentence report at the time, or were you taking that
24 as an admission on his part?

25 THE WITNESS: No, I didn't -- I didn't know

1 that he had successfully gotten that thrown out in some
2 way. But at the same time, he didn't admit to the
3 offense, so I didn't --

4 THE COURT: Right. So he denied it when he
5 spoke to you.

6 THE WITNESS: Yes.

7 THE COURT: But the Court that had heard it
8 before had also previously found it not to be credible.
9 Does that make any difference to your opinion?

10 THE WITNESS: They found it not to be
11 credible to what?

12 THE COURT: As a basis for enhancing his
13 sentence in his prior proceeding. He objected to it.
14 The Court that he was before at that time found it to be
15 not established by a preponderance, and therefore not
16 properly a part of his presentence investigation report
17 and not to be used against him.

18 MS. COSTELLO: To be clear, Your Honor, the
19 government conceded that it didn't apply.

20 THE COURT: Okay. They conceded --

21 MS. COSTELLO: That the enhancement did not
22 apply.

23 THE COURT: So they conceded prior to any
24 factual argument regarding it.

25 MS. COSTELLO: Correct.

1 THE COURT: All right.

2 MS. COSTELLO: I mean, the Statement of
3 Reasons says that the government conceded that the
4 enhancement did not apply.

5 THE COURT: I'll take that as a concession
6 that they didn't think they could make their factual
7 basis at the time. And so I'll ask the witness again,
8 does knowing that make any difference -- you're treating
9 this as if it is a fact in the universe that it in fact
10 happened. Is that correct?

11 THE WITNESS: I could not testify that this
12 actually happened. I considered it clinically.

13 THE COURT: Okay. So I want to be sure I
14 understand that. So your position is if this is, in
15 fact, true, it's significant. But that's not the same
16 thing as saying "I believe it to be true and therefore
17 it is significant."

18 THE WITNESS: Correct.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: I think there's some
21 consistency with the history. But if Your Honor asked
22 me "Are you telling me this definitively happened," I
23 would obviously not be able to say that I know with any
24 certainty that that occurred.

25 THE COURT: Okay. All right. Thank you,

1 counsel.

2 BY MR. BREDENBERG:

3 Q. Just one follow-up on that issue. Is it your
4 understanding that the allegations made by Christine
5 were what prompted Mr. Kozohorsky to be arrested for the
6 failure to register charge?

7 A. I don't know what came first in that situation.

8 Q. Okay. That's fine.

9 A. I know they were looking at him for that as well,
10 so.

11 Q. That's fine. Moving on. As a result of your
12 review of the deposition, your interview with him, and
13 his testimony today, what is it your understanding of
14 which alleged crimes he actually admitted to?

15 A. The only one that he admitted to in terms of the
16 sexually violent behavior is the January 15th, '87, rape
17 of Rhonda. He clearly still has sort of a distorted
18 picture of his involvement with the victim. But he did
19 acknowledge the sex was nonconsensual.

20 Q. Okay. And then every other allegation or
21 conviction he has denied since then, correct?

22 A. Denied either outright or said some version of
23 behavior happened but it was consensual.

24 Q. Okay. And at this point, I guess, what do those
25 denials mean to you, if anything?

1 A. Well, I mean, the failure to accept
2 responsibility for his actions is relevant in terms of
3 diagnostic considerations. One factor of antisociality
4 is difficulty accepting responsibility for one's
5 actions.

6 It can complicate treatment if a person is not
7 willing to admit to anything. Now, he's acknowledged
8 one; but clearly, with an offender like him, we're gonna
9 want to look at patterns across behavior, across
10 offenses, and that may be more difficult for him. And I
11 know a denial of the offenses or consequences is one of
12 the things that the federal register has said we should
13 consider in terms of serious difficulty controlling.

14 Q. So with regard to patterns, since we're talking
15 about the convictions, did you see a pattern with his
16 convictions?

17 A. There's -- yeah, I mean, there has been multiple
18 references to knife, multiple instances of threatening
19 to kill. There's comments in at least a letter that I
20 recently read to a woman, this concept about having a
21 cute little ass. That has come up in one of the other
22 offenses, commenting on the victim's butt. Anal sex has
23 been a threat or a behavior in some of the offenses. So
24 there's some similarities there. And again, there's
25 records that talk about other offenses that kind of fit

1 a pattern of similar modus operandi, as they said.

2 Q. Okay. Now we'll move on to what we call prong 2
3 and the diagnoses. Did you diagnose Mr. Kozohorsky with
4 any mental disorders?

5 A. I did.

6 Q. And what were those?

7 A. I diagnosed other specified paraphilic disorder
8 (nonconsent), other specified personality disorder
9 (antisocial), and alcohol use disorder.

10 Q. Okay. So let's talk about the first one. Is it
11 paraphilic disorder not otherwise specified (nonconsent)
12 or...

13 A. It used to be paraphilia NOS, not otherwise
14 specified. With DSM-5 they switched all the NOS to
15 "other specified paraphilic disorder."

16 Q. Okay. And explain what that is.

17 A. A paraphilic disorder is a pattern of recurrent,
18 intense, sexually arousing fantasies, urges, or
19 behaviors, involving either a deviant activity, so
20 sadism, exposing yourself, peeping into windows, or
21 targets, so prepubescent children, animals.

22 So all of the paraphilic disorders have that sort
23 of diagnostic criteria of recurrent urges, fantasies,
24 behaviors, that drive them to want to engage in conduct
25 with these deviant targets or deviant behaviors, and

1 that has to persist for a period of at least six months.

2 Q. Okay.

3 A. In this case we're talking about nonconsensual
4 sex is the deviant activity. And given his three
5 convictions for sexual assault and other allegations, I
6 considered those in making this diagnosis.

7 Q. Now, just to be clear, are all rapists -- do all
8 rapists have this diagnosis?

9 A. No. So I don't make this diagnosis very often.
10 The people who have talked about ways to diagnose it and
11 the criteria over the years have suggested that perhaps
12 we're talking about maybe 20 to 30 percent of rapists,
13 repeat rapists, might meet criteria for this disorder.
14 So lots of people rape for lots of reasons, but there
15 does seem to be a smaller subset of rapists who are
16 driven by this arousal to nonconsensual sex.

17 I know one of the main meta-analysis that's
18 looked at this kind of deviant arousal pattern in the
19 penile plethysmograph testing basically looked at -- so
20 it's in 2003 looking at arousal patterns to coercive sex
21 and normal, or consensual sex, in a group of rapists and
22 in a group of controls. And in the rapist category,
23 about 50 percent showed a stronger arousal pattern to
24 coercive sex than to consensual sex. Amongst the
25 normative group, or the nonoffending group, it was only

1 10 percent showed that same pattern.

2 Now, they updated that analysis later on and also
3 included a group of nonsexual violent offenders, so
4 again, men in prison for violent offenses but not sex
5 offenses, and tested them under the same scenario, and
6 they showed a pattern that was similar to the controls.
7 So what that suggested is that it isn't just
8 antisociality or violent criminality that might be
9 causing this interest in forced or coerced sex. It
10 seems to be specific to a group of men who do sex
11 offenses and are into that -- that type of arousal
12 compared to normal men, and even other inmates in
13 general, but who don't commit sex offenses.

14 Q. Okay. So in your opinion, is Mr. Kozohorsky one
15 of those people that is the 20 percent that are
16 specifically aroused to nonconsent?

17 A. This offense pattern and history, to me, is -- I
18 believe that does fit for him. It's, again, one of the
19 few times I've made this diagnosis.

20 Q. Okay. And what is that based on with regard to
21 Mr. Kozohorsky specifically?

22 A. Well, when you look at the specifics of the
23 offense, right, so all of these offenses involved clear
24 signs of nonconsent by the victim, them saying no, them
25 resisting. All of them -- some of them had sort of a

1 sadistic kind of component to them, fisting, threatened
2 to kill, anal sex, using a knife, using Icy Hot as a
3 lubricant. Those are all things that are extremely
4 frightening or pain inducing.

5 He's been convicted of or charged or alleged of
6 new sex offenses. He's been released three times after
7 some sort of sexually violent charge or conviction or
8 offense, and in every time he's been reconvicted or
9 recharged or realleged with a new sexually violent
10 offense within either eight to three years.

11 The one time we have allegations or reports that
12 he committed two sexually violent offenses within or
13 attempted two sexually violent offenses within a very
14 short time, a few days of one another. Those would be
15 the kind of things we're looking at. He's able to
16 maintain an erection and ejaculate during rape, which
17 most normal men are not wired to do that. We're not
18 wired to see signs of struggle and suffering and people
19 crying to stop and still be sexually aroused by that.
20 He's able to do that.

21 There's some kind of repetitiveness to some of
22 the behaviors he does, some of the things he says, that
23 suggest maybe there's kind of a fantasy or script to
24 what he does. He's raped under circumstances where
25 there's a high likelihood of getting caught, so he's --

1 some of these women he knows, he's known well. Other
2 ones he's raping at their home or at their job. These
3 are not places where one would expect to be able to get
4 away with a rape as easily.

5 He's had access to consensual partners during
6 some of these, right? So he was married during the
7 first three offenses yet he's still needing to go out
8 and rape people, which would suggest that consensual sex
9 alone isn't enough for him or isn't as interesting to
10 him.

11 He's got victims across different age ranges. So
12 some of them are teens, some of them are young adults.
13 Then we've got middle-aged women.

14 So all of those factors, to me, indicate somebody
15 who is aroused by nonconsensual sex, and it doesn't have
16 to be 100 percent. It doesn't mean that people that
17 have this disorder only rape, they never have normal
18 sex. A lot of the serial killers that we know of on
19 this planet have been married at the time they're out
20 doing serial killing. So the fact that, yes, he's had
21 some consensual sex partners doesn't rule this out as a
22 diagnosis.

23 Q. Now, you heard him testify just a bit ago, right?

24 A. Yes.

25 Q. And it's pretty clear that he claims or he says

1 that he's not aroused to nonconsent, correct?

2 A. Yes.

3 Q. In fact, he even kind of laughed, right?

4 A. Yes.

5 Q. So putting that with, you know, the other things
6 that you said, how does that kind of inform or affect
7 your opinion on what he is saying about what he's
8 aroused to?

9 A. Well, at this stage of the proceedings, it's
10 pretty rare that I've had people acknowledge that they
11 are sexually aroused by raping people. I mean, this is
12 a high stakes -- it could mean commitment for an
13 indefinite period, potentially for the rest of his life.
14 So the typical profile for these kind of civil
15 commitment, even presentence evaluations, is to deny
16 that this is a problem: It's something that happened
17 then, it's something that was an isolated incident, but
18 it's not an ongoing issue, it's not something I'm really
19 interested in.

20 So we have to take a look at what does the data
21 say. If this was one rape, okay, well, then we're not
22 gonna be able to make this diagnosis. If it's two rapes
23 and it's under much lengthier time frames and different
24 circumstances than I've testified to, probably wouldn't
25 diagnose that either.

1 But we've got at least three and a couple more
2 allegations and then records that suggest there's even
3 more, and the details of it, to me, fit more with
4 somebody who is aroused by nonconsensual sex than
5 somebody who just accidentally finds himself raping
6 people every two or three years after he gets out of
7 prison.

8 Q. You mentioned that some of his offenses had I
9 think what you called a sadistic element. Is that
10 right?

11 A. Yes.

12 Q. So did you consider a sexual sadism diagnosis?

13 A. I considered it. It's very pejorative, and I
14 would want more than just this. Part of the difficulty
15 with this diagnosis has been how to separate it from
16 sexual sadism. And, kind of, one of the more respected
17 researchers has proposed a continuum, sort of an
18 agonistic continuum from normal sex to kind of coerced
19 to psychological suffering to physical brutality, kind
20 of along that dimension. So this disorder would kind of
21 fit in that middle profile. But he has -- you know,
22 using Icy Hot during a forced anal sex is gonna cause
23 pain. That's -- I've had that substance on my skin
24 before. It does come across as burning, and having that
25 on a mucous membrane inside your anus would be very

1 uncomfortable.

2 Fisting people is typically not something you do
3 easily with someone. That's gonna cause some pain.

4 Threatening to kill people is gonna put an
5 extreme degree of fear in the person. And so those kind
6 of three behaviors are a little bit beyond simply "I'm
7 just forcing sex." There seems to be some degree of
8 wanting to cause some severe fear and/or at least a
9 little bit of pain as part of the sexual process but not
10 enough that I would diagnose sadism.

11 Q. Can I refer you to Government Exhibit No. 22?

12 A. Yes.

13 Q. Do you recognize that? Did you review that in
14 the course of your evaluation?

15 A. Yeah. This is one of the things I just received
16 in the last few days. I did read through this letter as
17 best I could. In some spots on the copy I had on the
18 computer were not as clear as some of this.

19 Q. What is this letter? What does it appear to you
20 to be?

21 A. It looked like a very lengthy graphic sexual
22 letter to pumping -- I can't -- "Pumping back Pumpkin"?
23 "Punkin"? Which I believe he testified to this morning
24 was -- I don't recall if it was Margaret or one of the
25 other women he had been with.

1 Q. Now, did you say it was a graphic letter? Is
2 that how you defined it -- described it?

3 A. Yes, just lots of repeated commentary about sex
4 and what he's gonna do and...

5 Q. Now, did you see any sadistic elements in this
6 letter?

7 A. My recollection is there was -- I thought there
8 was a reference in this letter somewhere to having used
9 the Bengay or the Icy Hot before on someone else, lots
10 of comments about forcing and anal and...

11 Q. Was there references to whippings or sodomy that
12 you remember?

13 A. Yes. I don't remember exactly where they were.

14 Q. Maybe turn to page -- the bottom of the page
15 2191. See that?

16 A. 2191?

17 Q. The top of that page.

18 A. Oh, on the top, okay. Yes, spanked with leather
19 thin belt, wire cord, heated curling irons pushed up
20 into her -- I'll say "vagina."

21 Q. Okay. Let's see. I'll ask you to turn to 2194.

22 A. Yes.

23 Q. And, you know, we don't need to talk about all of
24 the graphic language, but in the middle there, it
25 appeared -- does it appear to you that he's talking

1 about having sex with someone's daughter and then having
2 the mother essentially give him oral sex after?

3 A. Yes.

4 Q. And talking at the bottom of that page about
5 tearing the rectum to the point that it needs
6 stitches --

7 A. Needing stitches, yes.

8 Q. All right. Are those kind of the things that
9 you're referring to when you're talking about some of
10 the sadistic elements?

11 A. Yes. And if this is all we had, I'd still say
12 it's pretty graphic, but this could just be somebody's
13 fantasy life. But in conjunction with the history here,
14 again, it kind of fits with some of the things he's
15 already done and some of these offenses.

16 Q. So in other words, you've seen -- outside of this
17 letter, you've seen references to similar behavior from
18 Mr. Kozohorsky and other situations.

19 A. Yes, not all of those specific things --

20 Q. Right.

21 A. -- but this focus on sort of punishing, punishing
22 the anus, that kind of thing has been in some of his
23 other offenses.

24 Q. Okay. Now, considering that diagnosis, the not
25 otherwise specified paraphilic disorder of nonconsent,

1 did you determine whether you thought that diagnosis is
2 a serious mental illness, abnormality, or disorder?

3 A. Yes.

4 Q. And why is it serious, in your opinion?

5 A. It's serious because of the impact it has on his
6 victims, for one, and serious for the impact that it's
7 had on him. He's been incarcerated for much of his
8 life. He's not able to stay out of prison very long
9 before he gets new sex-related charges or allegations
10 and goes back. That has put him on the registry which
11 has impacted his work and employment and finances. So
12 that disorder has had significant negative impact on him
13 and obviously significant negative impact on the
14 victims.

15 Q. And what about the strength of his disorder? Has
16 he continued to offend after sort of being punished for
17 some of the offenses?

18 A. Yes, and that would be one thing you'd consider
19 for somebody's ability to control. So if you have an
20 interest that you try once and it's illegal and you get
21 punished and you stop, never do it again, then maybe you
22 have control. In his case he always finds a way to get
23 back in trouble in some way for another sexually violent
24 incident, which would suggest he doesn't have control
25 over that very well, because surely he wants to avoid

1 imprisonment.

2 Q. Okay. All right. Moving on to your second
3 diagnosis, it was other specified personality disorder
4 with antisocial features? Is that accurate?

5 A. Yes.

6 Q. Okay. And what information supports that
7 disorder?

8 A. So these are -- a personality disorder is an
9 entrenched pattern of maladaptive thinking and behaving
10 that causes the person difficulty functioning within
11 normal culture. So usually personality disorders are
12 characterized by at least two of the following four:
13 problems with cognition, problems with affect, problems
14 with interpersonal relationships, or impulsivity or
15 impulse control.

16 And Mr. Kozohorsky has some problems in all of
17 those areas. They're primarily antisocial in nature.
18 So again, he has a long history of repeatedly failing to
19 conform to social norms, breaking laws. I know in other
20 reports some people pointed out that not all of his
21 crimes were definitively against others. That isn't the
22 diagnosis for the disorder. It doesn't have to only be
23 interpersonal crimes. It's somebody who breaks laws in
24 general. Mr. Kozohorsky has done them both ways, both
25 burglaries and DUIs and resisting supervision but then,

1 yes, also sexual assaults.

2 He has had some deceitfulness. Obviously his
3 take on his offenses -- if you look at the records
4 there's inconsistencies around when he knew his father,
5 when he left home. My memory of reading some of the
6 more recent police reports that came out was that he did
7 use different names when he was in Wisconsin as an
8 adult, in part to help try to find work, so that these
9 weren't all just used as a juvenile trying to be in
10 school, because he really wasn't in school after age 15
11 other than in prison.

12 He has some impulsiveness. Clearly there's
13 irritability, aggressiveness about him in his history of
14 offending. He also described himself to me as having an
15 abrasive personality disorder. He doesn't take any
16 crap, as he put it, from anyone.

17 Obviously these offenses, the rapes are clear
18 disregard for the safety of other people. There are
19 references to lack of remorse in his accounting in the
20 past. He has some lack of remorse in his accounting now
21 as well. The diagnosis was made back in 1990 the first
22 time by Dr. Long who diagnosed a personality disorder
23 (antisocial type). In 2004 Dr. Simon in Arkansas DOC
24 referenced psychopathic antisocial and sadistic
25 personality traits in combination with a rape paraphilia

1 that made him at risk for continuing sexually assaultive
2 conduct. So it's all of those factors.

3 He would meet criteria for antisocial personality
4 disorder except there just isn't enough evidence of
5 conduct disorder, which you can think of as sort of
6 antisocial personality disorder as a juvenile. There's
7 a requirement that that have an age of onset prior to
8 15. Most of his stuff from the records that we know of
9 started at 15. However, with me, he did tell me,
10 surprisingly, that he was arrested at 12 or 13 for grand
11 theft auto. That doesn't appear anywhere in any of his
12 records. And I took him at his word for that both
13 because it would be unusual to report something like
14 that for no reason, and he also seemed to know -- he
15 said he'd been put in a youth home for a period of three
16 months as well, so he recalled the actual disposition of
17 that.

18 So there may be some, and if his earlier report
19 of having left home at age 11 is correct, it may be that
20 there is a greater history of juvenile conduct problems
21 that we just don't know about fully.

22 Q. Okay. Even not knowing that, if he did have that
23 conduct disorder, if there was something that showed
24 that he did have that prior to 15, would he then, in
25 your opinion, meet the full diagnosis for antisocial

1 personality disorder?

2 A. Yes.

3 Q. Okay. And for the same reasons you just
4 explained with the features?

5 A. Yes.

6 Q. Okay. And when you were describing the features,
7 I may have missed it. Did you mention whether he blames
8 other people?

9 A. Yes, he does not accept responsibility for not
10 just his offenses but he also has -- sometimes blaming
11 takes of other things that have happened to him that
12 aren't crimes.

13 Q. Did you get the sense that he felt like he was a
14 victim?

15 A. Yes, very much so.

16 Q. In what way?

17 A. A victim of not just these vindictive women but
18 in general, his position is that most women use rape
19 against a man, can cry "rape," and that's why he's had
20 to go to these exhaustive efforts to audiotape and
21 videotape and consider consent signings.

22 The prosecutors in some of his crimes were either
23 corrupt or it was their last case and they wanted to,
24 you know, make a point. His initial charges, he said
25 the sheriff or somebody in town was trying to hang a

1 bunch of rapes on him as a serial rapist. And even some
2 of the records from CTP of late, he's doing it but he's
3 also been writing letters furiously to various
4 government officials complaining about various things
5 that he doesn't have access to that he should have
6 access to, or he believes he should access to. So he is
7 kind of a grievance thinking individual. When things go
8 wrong in his life, I think he tends to look elsewhere
9 first before considering that he might have some
10 significant role in that.

11 Q. Is that something that some sort of mental health
12 or sex offender treatment at some point could
13 potentially assist him with?

14 A. I mean, that would be one of the things you would
15 do in sex offender treatment, is try to break down some
16 of that denial, try to get him to look at is there any
17 way that you played any role in some part of these
18 offenses and start working there little by little to
19 chip down at that. Because at this point everything
20 that's really gone wrong in his life, other than this
21 one rape of Rhonda, has been the fault of someone or
22 something else. He's perfectly fine; it's the system,
23 it's the women, it's the police, it's the prosecutor
24 that's caused all this.

25 Q. Now, with regard -- so let me try to ask it this

1 way. Do you see the diagnosis of personality disorder
2 being a standalone diagnosis, or does it somehow combine
3 or have sort of a synergistic effect with the other
4 diagnosis, the paraphilia?

5 A. Well, they are separate conditions. I mean, in
6 terms of thinking about difficulty controlling and
7 sexual dangerousness, clearly the two would play a role
8 because if you have a disorder that sort of predisposes
9 you to have interest in raping people, and on top of
10 that you have a personality disorder that says, you
11 know, rules and laws don't apply to you, you can do what
12 you want -- he talked about entitlement this morning,
13 and you can see some of that in his deposition
14 statements. That makes it maybe more likely that this
15 is an individual who may act on those deviant interests
16 if they're somebody who is a rule breaker in general.

17 Q. So I think what I'm trying to get to is -- and so
18 with that answer, are you saying that they kind of work
19 together -- I'm gonna ask you two questions and you can
20 answer them both.

21 Is it your opinion that the personality disorder
22 is serious standing alone? And is it serious combined
23 with the paraphilic disorder?

24 A. Yes. They're both serious disorders for similar
25 reasons. They have impacts on their victims that are

1 substantial, and that disorder negatively impacts him in
2 various ways.

3 In terms of the sexual dangerousness question,
4 they -- I mean, I want to say they -- they are
5 synergistic in a sense that neither one makes the other
6 better. In fact, being antisocial on top of having a
7 deviant sexual interest makes you probably more likely
8 to act on them than somebody who is not antisocial.

9 Q. Your last diagnosis is the alcohol use disorder,
10 is that right?

11 A. Yes.

12 Q. And what is that based on?

13 A. He's had multiple DUIs. He's had violations of
14 probation in part due to alcohol-related offenses. He's
15 been under the influence of alcohol during some of these
16 assaults, at least once, by his own admission. I think
17 he minimizes his use some because he told me he only
18 uses four to six times a year, that he used to drink
19 that much. And I know some of the records, one of the
20 more recent police reports where the victim gave a more
21 detailed account talked about he was already drinking
22 heavily early in the morning. That's not usually a
23 behavior you see in casual users.

24 And he came up, and I believe in 2013, in BOP
25 screening as having self-reported both alcohol and

1 marijuana use -- abuse, but identifying alcohol abuse as
2 the more primary.

3 Q. And how, if at all, does that alcohol use
4 disorder play into his psychological makeup with the
5 other two diagnoses?

6 A. I mean, alcohol obviously is a CNS depressant and
7 it can take the brakes off. Without it here I would
8 still have the same conclusion of sexual dangerousness.
9 But again, if this is somebody who is aroused by rape,
10 antisocial, and then around a woman while intoxicated,
11 that's a bad recipe.

12 Q. Okay. Thank you. We'll move on now to prong 3,
13 and have you formulated an opinion as to whether you
14 think Mr. Kozohorsky would have serious difficulty
15 refraining from sexually violent conduct as a result of
16 his disorders that you've diagnosed?

17 A. Yes.

18 Q. And what is your opinion on that?

19 A. I believe he would have serious difficulty
20 refraining from sexual violence or sexually violent
21 conduct as a result of primarily the other specified
22 paraphilic disorder and the other specified personality
23 disorder.

24 Q. Okay. And in forming that opinion regarding the
25 third prong, you mentioned earlier that you considered

1 two actuarial scores, the Static-99R and the 2002R? Is
2 that right?

3 A. Yes.

4 Q. And briefly describe what those showed you.

5 A. They're both multi-item actuarial instruments.
6 They get totaled. He scored a 4 on the Static-99R,
7 falls in the above average category, 79th percentile,
8 roughly twice the odds of sexual reconviction compared
9 to the average sex offender on that instrument.

10 Has five-year recidivism risks of roughly 11 to
11 17 percent and a ten-year risk of 27 percent.

12 On the 2002R, which has a few more items, he
13 scored a 6. That's also in the above average range;
14 similar percentile, 88th, about two and a half percent
15 -- or two and a half times more likely than the average
16 offender, average sex offender to reoffend based on that
17 score, and sort of 19 to 22 percent risk or reconviction
18 rate within five years.

19 Q. Why is it that you use two actuarial scores
20 instead of one?

21 A. Originally the plan was that the 2002 was
22 hopefully going to somehow overtake the 99R and just
23 become the one you use. I think people have tended to
24 use more than one, sometimes other instruments when they
25 were as well validated at the time, just because you

1 want to see are the instruments providing a consistent
2 picture.

3 So if you get one that shows kind of below
4 average risk and the other one was above average risk,
5 the recommendation at the time was to sort of average
6 them. Hopefully they come out very clearly and
7 consistent and you can say, "Okay, I feel reliable that
8 this is the right risk picture based on actuarials
9 because the two I used are very similar in what their
10 results were." And that's what the case was here. They
11 both come up above average risk, about the same
12 percentile rank.

13 Q. And do both of these actuarial tools take into
14 consideration age?

15 A. Yes.

16 Q. And how does that work?

17 A. It's the only item for which you can get a point
18 decrease of more than one point. So usually they're all
19 one, zero, one, and the age one is stratified. And
20 they're stratified differently. So on the Static-99R,
21 you get minus 3 if you're over 60. You get minus 1 if
22 you're, I think, 41 to 59. And then there's a zero
23 level and then there's an age below, I believe it's 35,
24 where you get two points added.

25 So in his case, he was 57, I believe, at the time

1 I saw him, so he gets one point off his score.

2 Q. Okay. And did you hear him testify earlier today
3 that he's still interested in sex if he were to get out?

4 A. Yes.

5 Q. Okay. And that he's still able to perform,
6 essentially?

7 A. Yes.

8 Q. Other than the actuarial tools, did you consider
9 other risk factors?

10 A. I did.

11 Q. And what were those?

12 A. I considered a list of dynamic risk factors that
13 were from a meta-analysis that look at multiple studies
14 that have looked at dynamic risk factors and identify
15 which ones are most significant across the studies. And
16 in that case, there's nine that I considered, and he has
17 six of them.

18 So the first one was any deviant sexual interest.
19 So obviously there's an interest and a long history of
20 committing sexually violent offenses. I diagnosed him
21 with a paraphilic disorder that would qualify for that.
22 One of the other ones -- you want me to just run down
23 them all or --

24 Q. Sure, I may -- yeah -- I may come back --
25 actually, you know what? Maybe the better way to do it

1 is you can identify what they are, and I just want to
2 make sure that I'm getting from your opinion what you
3 believe he has that supports that.

4 A. Okay.

5 Q. So with regard to the deviant sexual interest,
6 you mentioned the diagnosis. Is there anything else
7 that you saw that supports that?

8 A. Well, the obvious, which is the repeated charges
9 and convictions for sexually violent conduct, but that's
10 what the diagnosis is based on, so. That's the
11 definition of that particular risk factor, is is there a
12 DSM diagnosis of a paraphilic disorder or multiple
13 paraphilic disorders.

14 Q. What was another one of the dynamic risk factors
15 that you found?

16 A. Lack of emotionally intimate relationships with
17 adults.

18 Q. Okay. And what is that based on?

19 A. So this is a fact that looks at is this somebody
20 who can have a healthy, longstanding relationship with a
21 person. So he has been married. However, he was
22 unfaithful during that marriage. There is records that
23 say he has admitted previously to having forced his wife
24 to have sex with him during that marriage when she
25 didn't want to.

1 And he was actually in jail or prison for a big
2 chunk of that time they were married. So that would not
3 necessarily be a relationship we would consider an
4 emotionally intimate, stable, long-term relationship for
5 those reasons.

6 And then ever since then, his relationships, by
7 his own admission, have been mostly casual, either these
8 open relationships with a few women he talked about this
9 morning or 50-something prostitutes since 2007. So he's
10 primarily somebody who doesn't have sexual relations
11 within a committed, intimate bond relationship.

12 Q. Did you hear him testify that he doesn't trust
13 women?

14 A. Yes.

15 Q. And that, in fact, he recommended or -- he had a
16 plan to kind of protect himself from women that he
17 didn't trust. Is that -- did you understand that?

18 A. Yes. It's increasingly gotten more and more
19 sophisticated over time from minimal things to taping to
20 consideration of video to now essentially a consent
21 agreement to have sex.

22 Q. What's the next dynamic risk factor you
23 considered?

24 A. Lifestyle impulsivity.

25 Q. Okay. And what is that based on?

1 A. So one of the ways to measure that is poor
2 self-control or self-regulation difficulties. He's
3 obviously had difficulty regulating his sexual impulses,
4 some around his alcohol use. Irresponsibility is
5 another factor that loads on there, and he's had some
6 difficulty in that in terms of cooperating with
7 supervision and registration.

8 Housing and employment instability is on there,
9 and he has had some of that, although I put in my report
10 it seems to be more a function of a side effect of his
11 being on the sex offender registry than somebody who
12 really kind of just jumps from job to job or home to
13 home, so I don't ding him for that particular component.
14 But the other two things are there.

15 Q. What's the next factor you considered?

16 A. Poor problem-solving.

17 Q. What's that based on?

18 A. Denial, minimization of offenses, blaming others,
19 blaming the women for these offenses, failing to notice
20 you have a problem, failing to seek treatment for a
21 problem; in this case, failing to accept treatment when
22 it's offered to you. Those would all be things that
23 would kind of fall under the poor problem-solving
24 rubric.

25 Q. Okay. And what's the next one?

1 A. Resistance to rules and supervision.

2 Q. And how does that -- how does that exhibit itself
3 with Mr. Kozohorsky?

4 A. So one part of that was does the person have,
5 sort of, juvenile delinquency, and there is some
6 evidence of that; the two arrests we know of, the one he
7 self-reported. And then he's -- again, some difficulty
8 complying with supervision or registration when he has
9 been in the community under supervised or unsupervised
10 probation.

11 Q. And I think you had already mentioned in the area
12 of the diagnosis, but grievance thinking or hostility
13 and --

14 A. Yes, hostility and grievance thinking, and that's
15 based on this sort of -- presents himself as a victim of
16 lying women and vindictive prosecutors and an unfair
17 system and a poorly run, constitutionally-violating CTP
18 program; reports of, sort of, harassment and physical
19 aggression and sexual aggression towards women. There
20 is this sort of underlying hostility or grievance about
21 Mr. Kozohorsky, so he has that factor.

22 Q. Now, you just mentioned a little bit ago, just a
23 moment ago, actually, about his sort of defense
24 mechanism, kind of, of the audio recording, and you said
25 that it keeps kind of progressing, kind of escalating,

1 let's call it. What does that mean to you from a
2 psychological perspective in someone that's looking at
3 risk?

4 A. Well, there's his version of it, which is he's
5 using it as a way to genuinely try to protect himself
6 from false allegations, although I've been doing this
7 for 30 years and I've never met anybody who's been
8 accused of this many false offenses. But that's one way
9 to look at it.

10 The other one, to me, is that it's also possible
11 that he's taping some of these encounters to use for
12 later on with masturbation or blackmail. I mean, this
13 is -- I don't know this to be true, but in terms of
14 considering the range of alternatives here, there
15 definitely is -- he could be genuinely doing this to
16 make sure that he's never accused of a sex offense, but
17 it's also possible that he's kind of keeping these as
18 trophies or tapes to go over in the future for sexual
19 stimulus.

20 Q. To that point, he testified that -- he said that
21 masturbation itself was mechanical to him. Did you hear
22 that testimony?

23 A. Yes.

24 Q. But then at the same time, we were looking at
25 that letter that he wrote that had all of that -- I

1 think what you called fantasies. Do those two things
2 kind of jive together?

3 A. No. I mean, I've met very few sex offenders of
4 the thousands I've met who tell me they don't have any
5 sexual thoughts when they masturbate. Usually there's
6 some sexual thought of something, if it's a past partner
7 or celebrity from television, something. And yeah, the
8 detailed and graphic and on and on and on lengthy letter
9 about all these different sexual things that he wants to
10 do suggest that there is an inner sexual fantasy life,
11 an inner -- this is not something -- I don't think any
12 one of us could write this letter on our own today.
13 This requires you to have thought about this. This has
14 been in his mind in some way to be able to create eight
15 or nine pages of all of this different, highly graphic,
16 violent stuff.

17 I don't -- even me working with men like this my
18 whole career, I don't know if I could just sit down and
19 pen this out myself to this degree.

20 Q. Moving on, did you consider protective factors as
21 well?

22 A. I did.

23 Q. And what did you find -- what did you consider,
24 first?

25 A. I considered the five kind of main factors. One

1 is has the person ever completed sex offender treatment.
2 That's a no. The other one is any physical problems or
3 medical problems that really impact his sexual arousal
4 or functioning. That's a no. He's testified as such.

5 And then the other one would be supervision, and
6 the other one is older age. So clearly he's at an age
7 where sexual recidivism is less common, and so he's
8 gotten credit for that on his actuarial scores. And as
9 a group, supervision does seem to hold some protective
10 value from sex offenders who are released compared to
11 those who don't get supervision.

12 Now, you do have to take into account the
13 individual sex offender's history. If this is somebody
14 who's been on probation before and he's reoffended, then
15 it may be for this individual that supervision isn't
16 protective, or at the very least we can say we don't
17 have good evidence that it will be protective for him.

18 And he has been in the community on release and
19 reoffended in ways or been realleged to have committed
20 new offenses. So it makes you question will lifetime
21 supervision in this case be sufficient alone to keep him
22 on the straight and narrow.

23 And the last one I considered is offense-free
24 time in the community, which has to do with how long has
25 somebody been living in the community not committing

1 offenses of any kind after they've been released from a
2 sex offense. We have the allegations in August of 2010,
3 but considering them as not knowing them to be true, if
4 we go back, he's released on that sex offense in March
5 of '07. He's in the community until August of 2010. So
6 that's a two and a half year period where he hasn't
7 offended sexually but he has been offending in other
8 ways. And that means you don't get the same level of
9 protection. He's had two DUIs in that time frame. He's
10 had a theft charge in that time frame, a failure to
11 register, a failure to comply with sex offender
12 restrictions. So this is not an offender who has really
13 toed the line and has been completely offense-free. He
14 just, that we know of, hasn't done a sex offense; and,
15 in fact, lo and behold, in August there is an allegation
16 that he has done a sex offense. So I can't give him
17 full credit for time in the community as a protective
18 factor, given that history.

19 Q. I want to follow up on one of those protective
20 factors that you mentioned, and that's not completing
21 sex offender treatment, right?

22 A. Yes.

23 Q. At the time you interviewed him, he wasn't
24 involved in treatment at all, right?

25 A. Correct.

1 Q. And, in fact -- well, did he tell you what his
2 interest in treatment was?

3 A. Primarily, that he would cooperate with whatever
4 they told him to when he was released but that he didn't
5 have a problem, he didn't need treatment; and he's
6 declined to be involved in treatment, sex offender
7 treatment, prior to when I saw him.

8 Q. And then subsequently, did you see more BOP
9 records that suggested to you whether he was actually
10 interested in treatment?

11 A. I know he ended up enrolling in the CTP and
12 beginning that coursework. At the same time, I also saw
13 comments about his -- there's -- you have to do kind of
14 a readiness for treatment statement. That was done by
15 him. That was judged quite poorly, that he wasn't fully
16 accountable. And so I think they had some sense of how
17 much was he really invested versus he just wanted to be
18 in the program, but nonetheless, they put him in the
19 program.

20 And at the same time, then, he's been having some
21 conflict around what the program lets him do and doesn't
22 let him do and seeking out government officials to try
23 to get that changed and to file complaints.

24 So he's in the program and he seems to be doing
25 some of it. At the same time, I'm not sure how much of

1 it is fully self-motivated as it is, as he said this
2 morning, just to show the Court that he's willing to do
3 it if someone makes him.

4 Q. You've been involved in sex offender treatment as
5 well in your career, right?

6 A. Yes.

7 Q. Do you have an opinion as to how effective sex
8 offender treatment is for a person who doesn't think he
9 needs it?

10 A. This has been debated for a while, you know, can
11 you do treatment with people who are in denial. I don't
12 want to say no, but it's very difficult because, again,
13 we're trying to look at patterns of behavior and
14 patterns of thinking error, and when somebody doesn't
15 admit to any or only one, it's more difficult to do
16 that.

17 Treatment in general has shown to be effective,
18 at least in meta-analysis. So it seems like people that
19 complete treatment have somewhere between a 25 or 33
20 percent reduction in recidivism compared to those that
21 don't.

22 At the same time, some of the gold standard
23 studies have suggested that maybe treatment's not as
24 effective as we think.

25 Q. Now, you heard him testify earlier. Did you hear

1 him say anything about a release plan?

2 A. Yes. We talked about where he was -- where he
3 would go and what he'd be doing if he was released.

4 Q. Did that seem sufficient to you, in your
5 professional opinion?

6 A. Well, at the time I met him, it was just
7 primarily the basics because he said, "I'm gonna go back
8 to Jonesboro, I'm gonna work, basically, for the same
9 people I've always worked for, and I'll do whatever they
10 tell me." That was kind of the gist of it.

11 Q. Okay. Dr. Hastings, for the record, what is your
12 opinion as to whether Mr. Kozohorsky, as a result of his
13 mental disorder, would have serious difficulty
14 refraining from sexually violent conduct?

15 A. It is my opinion that I think the totality of the
16 data indicates he would have serious difficulty
17 refraining from sexually violent conduct at this time.

18 MR. BREDENBERG: Thank you. No further
19 questions, Your Honor.

20 THE COURT: Cross-examination, counsel.

21 MS. COSTELLO: Thank you, Your Honor.

22 THE COURT: Actually, it's 12:22. Why don't
23 we take a lunch break of 45 minutes. We'll come back
24 and we'll proceed to cross-examination. Let's call it
25 12:25. We'll come back at 10 after 1:00.

1 (Proceedings recessed at 12:24 p.m.)

2 (Proceedings recommenced at 1:12 p.m.)

3 THE COURT: All right. Back on the record
4 after the lunch break. I'll remind the witness he's
5 currently under oath and turn him over to
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MS. COSTELLO:

9 Q. Good afternoon, Dr. Hastings.

10 A. Good afternoon.

11 Q. So your report -- if you could turn to
12 Government's Exhibit 4, page 15.

13 A. Okay.

14 Q. The last few sentences there, you write that he
15 appears to be in denial about all but one of his sex
16 offenses, and he may have minimized his alcohol use
17 history. Do you see that?

18 A. Yes.

19 Q. And you say his main psychological defenses
20 include denial and blaming, right?

21 A. Yes.

22 Q. And I think you testified on direct examination
23 that denial can be problematic in sex offender
24 treatment, correct?

25 A. Yes.

1 Q. Would you agree that denial is not an empirically
2 validated risk factor for reoffense?

3 A. Yeah, not a direct relationship. If it's
4 related, it's through people who are in denial are more
5 likely to fail out or quit treatment, and that is
6 related to risk for recidivism.

7 Q. So there's no specific study on the relationship
8 between denial and risk of reoffense, correct?

9 A. There is. It just hasn't shown that direct
10 relationship.

11 Q. Okay. I want to move on to your diagnoses. You
12 gave the diagnosis of other specified personality
13 disorder with antisocial features, right?

14 A. Yes.

15 Q. You would agree, would you not, that generally,
16 antisocial behavior decreases with age, right?

17 A. Yes, for personality disorders, there's a general
18 trajectory as a group that that can fade out over time.

19 Q. Now, I want to talk about your diagnosis of other
20 specified paraphilic disorder (nonconsent). Would you
21 agree that various iterations of a nonconsent paraphilia
22 have been considered for inclusion in many different
23 iterations of the DSM?

24 A. Say the first part again.

25 Q. Various iterations of a nonconsent paraphilia,

1 they may have had different names, but the idea of a
2 paraphilia related to nonconsent has been considered for
3 inclusion in many different versions of the DSM.

4 A. Yes.

5 Q. And it has never been included in a prior
6 version, correct?

7 A. Never has the specific diagnosis, no.

8 Q. And it was specifically considered for inclusion
9 in the current version, correct?

10 A. Yes, under paraphilic course or disorder.

11 Q. And it was not included, correct?

12 A. Correct.

13 Q. And would you agree that there are many reasons
14 that people commit the crime of rape?

15 A. Yes. I think I've testified to that.

16 Q. Would you agree that many of those reasons have
17 nothing to do with attraction to nonconsent?

18 A. Yes.

19 Q. So in order to make the nonconsent diagnosis, you
20 need to be able to demonstrate that the person is
21 actually attracted to nonconsensual sex, right?

22 A. More often than not, we have to infer it through
23 the factors that I described earlier on direct.

24 Q. And those factors, you discussed them in your
25 report. I believe it's on page 16, the bottom of your

1 report -- or the bottom of page 16 in your report?

2 A. Yes.

3 Q. And those factors you cite for the -- do those
4 factors come from a book by a man named Doren?

5 A. They do.

6 Q. Would you agree that there are no tools like, for
7 example, the Static-99, that are available to make the
8 determination of whether a person is attracted
9 specifically to nonconsent?

10 A. Yeah, there are no actuarial tools, psychological
11 tests, other than PPG.

12 Q. And you don't -- you've never seen a PPG that was
13 conducted on Mr. Kozohorsky, correct?

14 A. Correct.

15 Q. You testified about something called the
16 agnostic [sic] continuum on direct examination.

17 A. Yes.

18 Q. Who is responsible for that idea? Do you know
19 whose research is responsible --

20 A. Raymond Knight.

21 Q. I'm sorry. Can you say that again?

22 A. Raymond Knight.

23 Q. I want to talk about the 1987 allegation for
24 which Mr. Kozohorsky was charged with aggravated
25 assault. Do you recall testifying about that on direct

1 examination?

2 A. Yes.

3 Q. Did you rely on that allegation when formulating
4 your opinion?

5 A. I considered all of the charges and allegations
6 in making my opinion, yes.

7 Q. And you're aware that it was nol-prossed, right?

8 A. Yes.

9 Q. You also testified that Mr. Kozohorsky has an MO
10 in some of his offenses, right? Do you remember that
11 line of -- that testimony?

12 A. Yes. That was taken from a record that said that
13 specifically.

14 Q. Okay. At the time that you wrote your report,
15 had you seen that record?

16 A. Yes. I believe it's quoted in the report.

17 Q. So you testified, I believe, that multiple of his
18 offenses involved a knife, right?

19 A. I think there was two, or at least allegations of
20 two.

21 Q. Which allegations were those?

22 A. The one in '87.

23 Q. The one that was nol-prossed, right?

24 A. Yes. I guess that was the only one for that
25 offense that I can locate at the moment. I had

1 recollection there was another reference to a knife on
2 one of the allegations or crimes, but I can't find it in
3 those official five I've listed.

4 Q. You also testified that he -- many of his
5 offenses or multiple of his offenses involved anal rape.
6 Do you remember that?

7 A. Yes. There's suggestions of threats of anal rape
8 or anal rape.

9 Q. In which cases?

10 A. The offense against Rhonda, I believe, at the gas
11 station was a threat of anal rape if she didn't comply,
12 and then the attempted rapes in '06. Two.

13 Q. And what are you relying on to determine that the
14 anal rape -- are you relying on the phrase that he said
15 he would stick his penis somewhere else if she did not
16 comply?

17 A. Yes. I was saying that there was either anal
18 rape or threat of anal rape in those two offenses, and
19 then in this new letter, fantasy letter, of lots of
20 stuff about anal sex.

21 Q. And that fantasy letter, I did want to direct
22 your attention to it. I believe it's at Government's
23 Exhibit 22. Is that right?

24 A. You would know better than I. Yes.

25 Q. Okay. Now, I'd ask you to turn to page 2190.

1 It's Bates 2190 on the bottom there.

2 A. Yes.

3 Q. And in the middle it says, "Libby loved Icy Hot."
4 Do you see that?

5 A. Okay, yes.

6 Q. Okay. And then at the bottom, the last two words
7 are "She loved," and then if you go on to 2191, it says,
8 "to be spanked with a leather thin belt or a wire cord."
9 Do you see that?

10 A. Yes.

11 Q. Okay. And then I'm gonna ask you to turn to
12 2194.

13 A. Yes.

14 Q. The last full sentence there. I'm gonna ask the
15 Court to excuse any profanity. "She wanted ass, legs,
16 and back whipped with extension cords." Do you see
17 that?

18 A. Yes.

19 Q. All of those statements that we just discussed
20 describe someone who is enjoying the behavior, correct?

21 A. They suggest that he wrote she wanted the
22 behavior, yes.

23 Q. Not that she didn't want it, correct?

24 A. Correct.

25 Q. Now, you talked about the attempted rape

1 conviction in 2006 on direct examination. Do you recall
2 that?

3 A. Yes.

4 Q. You've evaluated a lot of sex offenders, right?

5 A. Yes.

6 Q. A lot of rapists?

7 A. Yes.

8 Q. And as part of your job as a forensic
9 psychologist, you read documents related to their
10 criminal records, right?

11 A. Yes.

12 Q. Like judgments?

13 A. Yes.

14 Q. In your experience, is it common for a third-time
15 rapist to get a noncustodial sentence?

16 A. In general it seems unlikely. But again, I can't
17 think of any specific cases I've had where this has been
18 the case.

19 Q. You'd agree that he was charged with four counts
20 of attempt- -- of actual rape, right?

21 A. Yes.

22 Q. But he ultimately pled to attempted rape,
23 correct?

24 A. Yes.

25 Q. In your report, you reference -- you reference

1 this in your testimony as well -- other credible
2 evidence of sexual assaults. Do you recall that?

3 A. Yes. I was quoting what was said in another
4 record.

5 Q. And was that record the presentence report?

6 A. It was from another document, but I think that
7 document was commented in the presentence report. But
8 if you give me a second I can hopefully find it.

9 Yes. It was in the presentence report, quoting a
10 report or assessment done in 2004 by Dr. Simon.

11 Q. If you turn to Government's Exhibit 7, is that
12 the presentence report?

13 A. Yes.

14 Q. Can you turn, if you would, to page 12?

15 A. Yes.

16 Q. Paragraph 50. It says, "According to a Sex
17 Offender Screening and Risk Assessment conducted on
18 September 20th, 2004, by George K. Simon, Ph.D." Do you
19 see that?

20 A. Yes.

21 Q. Is that what you were relying on when you
22 referenced in your report other credible allegations of
23 sexual assault?

24 A. Yes. That's what it says a few sentences down.

25 Q. And is that also what you relied upon when you

1 mentioned in your report that Mr. Kozohorsky had
2 admitted to forcing his wife to have sex with him
3 against her will?

4 A. Yes.

5 Q. And at the time that you wrote your report, you
6 had not seen any of this, quote, credible documentation,
7 correct?

8 A. Correct.

9 Q. You just relied on what was written in the
10 report, right?

11 A. Yes.

12 Q. Have you since had occasion to see any
13 documentation that corroborates this account? Let me
14 actually strike that question and ask you to turn, if
15 you would, to Government's Exhibit 20.

16 A. Twenty?

17 Q. Yes.

18 A. Okay. Yes.

19 Q. That document says at the top, right beneath the
20 exhibit sticker, "Sex Offender Screening and risk
21 assessment," correct?

22 A. Yes.

23 Q. And the date of assessment is on the left-hand
24 side there. What date does it say?

25 A. September 20th, 2004.

1 Q. And the bottom, there's a signature block on the
2 right side. Whose signature block is that?

3 A. There's no signature here.

4 Q. And what does it say underneath the signature
5 line?

6 A. You mean the --

7 Q. Does it say George K. Simon, Jr., Ph.D.?

8 A. Oh, yes. I was about to read the whole lengthy
9 legalese below it.

10 Q. No, we don't need that. It says George Simon,
11 right?

12 A. Yes.

13 Q. Now, I'm gonna draw your attention to some of the
14 information in this -- so you would agree that this is a
15 sex offender screening and risk assessment from
16 September 20th, 2004, right?

17 A. That's what it says.

18 Q. And it says in it -- it's the one, two, three,
19 four, five -- sixth sentence from the top, "He has at
20 least two other similar sexual assault charges that were
21 not successfully prosecuted," right?

22 A. Which paragraph are you in?

23 Q. The first one.

24 A. Yes.

25 Q. Doesn't give you any description about those

1 charges, right?

2 A. No.

3 Q. Doesn't tell you what kind of sexual assault it
4 was, right?

5 A. Correct.

6 Q. Doesn't tell you when it was, right?

7 A. Correct.

8 Q. Doesn't tell you who it involved, correct?

9 A. Correct.

10 Q. And then further down in the paragraph titled
11 "Aggravating/Mitigating Factors Affecting Presumptive
12 Risk Level," the second full paragraph says, "The
13 offender has convictions for two violent rapes of
14 similar character, and there's ample credible
15 documentation he has committed even more such acts than
16 his official conviction record reflects." Do you see
17 that?

18 A. Under aggravating and mit- -- I only have one
19 paragraph on that one.

20 Q. The second sentence.

21 A. Second sentence. Okay.

22 Q. I'm sorry. Says, "The offender has convictions
23 for two violent rapes of similar character, and there is
24 ample credible documentation he has committed even more
25 such acts than his official conviction record reflects,"

1 right?

2 A. Yes.

3 Q. It doesn't say what that credible documentation
4 is, right?

5 A. It does not.

6 Q. It doesn't say who the person is relying on,
7 correct?

8 A. Correct.

9 Q. Or whether any fact finder has made a
10 determination about it, correct?

11 A. Correct.

12 Q. And you've not spoken with anyone who wrote this
13 document, correct?

14 A. No.

15 Q. If you take a minute, if you would, and see where
16 in that record it mentions marital rape, if you could,
17 if it mentions marital rape at all.

18 A. It does not.

19 MS. COSTELLO: Nothing further, Your Honor.

20 THE COURT: Redirect, counsel?

21 MR. BREDENBERG: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BREDENBERG:

24 Q. Dr. Hastings, with regard to the allegation
25 against Sandra that was nol-prossed, is it your

1 understanding that that was nol-prossed in connection
2 with a plea in the connected case of Rhonda?

3 A. Yes.

4 Q. Okay. Can I turn you to Government Exhibit 17,
5 please?

6 A. Okay.

7 Q. Do you know what this is? Can you identify that?

8 A. Statement taken from Sandra.

9 Q. Is this something that you considered in the
10 course of your evaluation?

11 A. I did not have this at the time.

12 Q. Did you see it after --

13 A. I did.

14 Q. Okay. And is it something you considered in your
15 opinion that you testified to today?

16 A. Yes.

17 Q. Okay. And could you just summarize what you took
18 from this statement?

19 A. I mean, it's -- it's very consistent with the one
20 that was from the presentence report, and then -- yeah,
21 there's some returning to the home and some issues
22 couple days before. I do not remember all of the
23 specifics of this.

24 Q. That's okay. The point is that this appears to
25 be a statement from the victim describing what happened.

1 A. Yes. It's very consistent with what I had quoted
2 in the report, just a little more detailed.

3 MR. BREDEMBERG: Okay. I have no further
4 questions, Your Honor.

5 MS. COSTELLO: May I have a brief recross,
6 Your Honor?

7 THE COURT: Yes, within the scope.

8 RE CROSS EXAMINATION

9 BY MS. COSTELLO:

10 Q. That statement was written by someone named
11 Sandra Lancaster, right? Government Exhibit 17?

12 A. I'm sorry. I didn't hear the first part.

13 Q. I said Government's Exhibit 17 says it's a
14 statement taken from Sandra Lancaster, right?

15 A. Yes.

16 Q. Have you spoken to Sandra Lancaster?

17 A. Of course not.

18 Q. And you testified that the -- that aggravated
19 assault charge was nol-prossed as a result of his plea
20 to the rape, right?

21 A. That's my understanding, yes.

22 Q. Were you there in court?

23 A. No. I believe it was from -- I thought the
24 presentence report and some of the other criminal
25 records, that they were considered as one event and -- I

1 mean, that's where I'm having my notes, "as part of a
2 plea deal with second charge."

3 MS. COSTELLO: Nothing further, Your Honor.

4 MR. BREDENBERG: Nothing, Your Honor.

5 THE COURT: Thank you, sir. You may step
6 down.

7 THE WITNESS: Thank you.

8 THE COURT: Do the parties mind if he's
9 released from his subpoena?

10 MS. COSTELLO: No, Your Honor.

11 MR. BREDENBERG: Well, Your Honor,
12 Dr. Hastings is the court-appointed expert and...

13 THE COURT: I'm happy to keep him if you
14 want him to be able to comment on defense witnesses.

15 MR. BREDENBERG: At least for now, if
16 that's -- yeah.

17 THE COURT: All right. Dr. Hastings, I'll
18 ask you to remain in court in case you're needed for
19 rebuttal. Next witness.

20 MS. PRATESI: United States calls Dr. Dawn
21 Graney.

22 THE CLERK: Please place your left hand on
23 the Bible, raise your right hand, and state your name
24 for the record.

25 THE WITNESS: Dawn Graney.

1 (The witness was placed under oath.)

2 THE COURT: For the record, Dr. Graney has
3 previously testified before this Court and accepted as
4 an expert. She will so testify today.

5 DIRECT EXAMINATION

6 BY MS. PRATESI:

7 Q. Good afternoon, Dr. Graney.

8 A. Good afternoon.

9 Q. Are you familiar with the respondent in this
10 case, James Kozohorsky?

11 A. I am, yes.

12 Q. And how are you familiar, Dr. Graney?

13 A. I conducted a precertification evaluation of
14 Mr. Kozohorsky in early 2021.

15 Q. And as part of that precertification evaluation,
16 what questions were you asked to consider?

17 A. I was asked to do a diagnostic assessment and
18 then evaluate his risk of sexual dangerousness.

19 Q. Dr. Graney, after conducting your evaluation, did
20 you formulate an opinion as to whether Mr. Kozohorsky
21 meets criteria for civil commitment under 18 United
22 States Code Section 4248?

23 A. I did.

24 Q. And did you memorialize your opinion in a written
25 report?

1 A. Yes.

2 Q. Can you please turn your attention in that binder
3 to Government's Exhibit 2?

4 A. Okay.

5 Q. Is that the forensic evaluation report you
6 authored regarding Mr. Kozohorsky dated March 12th,
7 2021?

8 A. Yes.

9 Q. And, Dr. Graney, during your evaluation, what
10 information did you consider?

11 A. I had some records available, the PSI, some
12 police reports, and some court documents. I had his
13 Bureau of Prisons medical and psychology records, and
14 that was primarily what I relied on. He had declined to
15 interview with me for the evaluation.

16 Q. And even though Mr. Kozohorsky declined to
17 interview with you, did you contact any other
18 individuals when you were conducting your assessment?

19 A. I did reach out to an Assistant United States
20 Attorney and a U.S. Probation Officer in Missouri to try
21 to obtain some additional records. They said most of
22 the records were now electronic files and that his case
23 was -- his cases were older, that they would have been
24 archived. So they didn't know how quickly those could
25 maybe be accessed.

1 Q. And, Dr. Graney, since you've conducted your
2 evaluation, have you had the opportunity to review any
3 additional documentation?

4 A. Yes. With the discovery materials I've received
5 some additional police reports and some letters that
6 Mr. Kozohorsky has written or exchanged with other
7 individuals, things of that nature.

8 Q. And did you also review Mr. Kozohorsky's
9 deposition?

10 A. I did, yes, as well as the other expert reports.

11 Q. And has any of this additional information that's
12 been provided to you changed any of your opinions as set
13 forth in your report?

14 A. No, it's not changed any of my opinions.

15 Q. Dr. Graney, I'd like to start with, you know,
16 what we generally refer to as prong 1. During the
17 course of your evaluation, did you determine whether
18 Mr. Kozohorsky engaged in or attempted to engage in
19 sexually violent conduct?

20 A. Yes.

21 Q. Go ahead.

22 A. Oh. I was gonna say, so as has been discussed,
23 he had the attempted rape, which was later listed as a
24 aggravated assault, for the January 1987 offense with
25 Sandra, and then he had the rape conviction for the 1987

1 offense with Rhonda as well as the conviction in, I
2 believe, '89 for Nadine and then later 2006 for Linda
3 Burnsed.

4 Q. And, Dr. Graney, we've heard some extensive
5 testimony today about those offenses and the conduct
6 that was alleged for each of them. I just want to start
7 with the 1987 offense. Was there any information that
8 you considered that we haven't really already discussed
9 today?

10 A. Well, not at the time I did my evaluation, but
11 information that I've received with the discovery
12 materials for me has added support to my opinion.

13 Particularly, there is information that showed
14 that just hours after his sexual assault to Rhonda,
15 which is the one rape he does admit to, there was a
16 woman named Barbara, who was either the wife or live-in
17 girlfriend of one of his friends, and, in fact, that
18 friend was with him at the time that he raped Rhonda.
19 So I learned that he was with two individuals. He said,
20 "I have some business to take care of at this Bargains
21 Unlimited store, can you drive me there?" So they drive
22 him there. They wait in the car. That's when he rapes
23 Rhonda, unbeknownst to them.

24 But the wife of one of those men said that later
25 that day he came to her house, he appeared, I don't

1 know, anxious, said he was hiding from the police for a
2 DWI; asked her, basically, if she wanted to, I guess,
3 fool around, have sex. She said no, so he proceeded to
4 pull out his penis to begin masturbating in front of her
5 and making vulgar remarks.

6 So that was significant to me, that just hours
7 after committing one rape, which he has acknowledged,
8 that he then goes on to another woman's home, and even
9 though he doesn't force her to engage in direct sexual
10 contact would, you know, proceed to masturbate in front
11 of her after she's not welcomed those advances.

12 The same woman said that he would often prior to
13 that come to her home when her husband wasn't there to
14 have coffee, and that she woke up in the middle of the
15 night one night to find him standing at the foot of her
16 bed, and there was evidence that he had broken through
17 the back door. Now, when she asked him to leave, he did
18 leave. But again, concerning to me that he had been
19 visiting this woman and broke into her home in the
20 middle of the night, considering his history of violent
21 sexual assaults.

22 So those records were significant in adding
23 further support for my opinion.

24 Q. And were there any additional -- is there any
25 additional information that you considered or was

1 important to you from any of the other allegations or
2 convictions we've discussed today?

3 A. One of the other things that I found significant
4 was -- I believe in his -- I don't know if it was at the
5 time of his report to the police and/or maybe at the
6 time of his deposition, but he was talking about the
7 offense involving Linda Burnsed. And he had, of course,
8 you know, he described it as a consensual sexual act and
9 said that it was dark and he reached over off of a table
10 to grab what he thought was KY lubricant and instead
11 grabbed the Bengay. But in reviewing that letter he
12 wrote in 1995, which was 11 years before that offense,
13 he talked about using, like, hot pepper or Icy Hot or
14 other kind of menthol ointments during sexual encounters
15 and that, you know, he had done that with his wife. And
16 so that seemed to be something specific to him that was
17 arousing to him. And so he had used that during the
18 offense with Linda Burnsed.

19 Q. Dr. Graney, what, if any, significance do the
20 allegations made by Christine have towards your opinion?

21 A. So when I was writing my evaluation, I did take
22 into account that she did allege a sexual assault. I
23 mean, certainly this would have been the fifth
24 allegation against him by that time. There were no
25 details, however, other than referring to it as a sexual

1 assault. I had no details as to what allegedly had
2 happened. I tried to get, again, some information from
3 the U.S. Attorneys or probation as to whether there was
4 a police report or anything with more details, and they
5 didn't have anything available.

6 There was discussion about her allegations being
7 used towards an enhancement in his sentencing. I know
8 later that it appeared that did not -- that enhancement
9 was not added.

10 The U.S. Attorney I spoke to was not involved in
11 the original case, did have some recollection of that
12 case. He said he didn't believe it was anything about
13 the -- about Christine's credibility, or anything like
14 that, that resulted in them not adding that adjustment
15 but, you know, he said it could have been if she changed
16 her mind about testifying at sentencing, or something of
17 that nature, that that could have also affected the
18 case.

19 So I did give it some weight. You know, I still
20 don't certainly know for a fact what happened. But
21 considering his history, I certainly just didn't
22 discount it.

23 Q. And, Dr. Graney, did you hear Mr. Kozohorsky
24 testify today regarding his offense conduct?

25 A. Yes.

1 Q. And how many of these incidents of sexual
2 violence has he admitted to?

3 A. Just the one with Rhonda.

4 Q. And what, if anything, does that tell you?

5 A. You know, it just -- I know there's been
6 discussion about denial. You know, he's denied four of
7 the five alleged offenses. Even though he's admitted to
8 the rape of Rhonda, I still think he minimized some of
9 that or downplayed some of that. But I also think, you
10 know, it plays into his attitudes toward women. He
11 describes kind of the -- that this is a thing that women
12 do if they're not happy with a man or they want to
13 retaliate, that they're very quick to allege rape. And
14 so I think it just speaks to some of his general
15 attitudes toward women, you know, speaks to some of his
16 cognitive distortions.

17 Q. And before we touch on some of the diagnostic
18 criteria, just to summarize, in light of
19 Mr. Kozohorsky's criminal convictions and the
20 information you've heard today, would you -- in your
21 opinion, has he engaged in or attempted to engage in
22 sexually violent conduct?

23 A. I believe there was an attempted sexual assault
24 with Sandra in '87. There was the rape of Rhonda with
25 '87. I did give credit to, certainly, the conviction

1 for the rape of Nadine in '89 as well as the conviction
2 for the case with Linda in 2006.

3 Q. And, Dr. Graney, during the course of your
4 evaluation with Mr. Kozohorsky, did you diagnose him as
5 suffering from any mental illness, abnormality, or
6 disorder?

7 A. I did.

8 Q. And what were those diagnoses?

9 A. So I gave him an other specified paraphilic
10 disorder (nonconsent), other specified personality
11 disorder with antisocial features, and a mild alcohol
12 use disorder.

13 Q. And can we sort of take those in order and start
14 with the other specified paraphilic disorder? Can you
15 briefly describe the diagnostic criteria for a
16 paraphilic disorder, generally?

17 A. So it's an intense and persistent interest in
18 what would generally be considered a deviant sexual
19 arousal. You know, it's actually sexual interest in
20 general stimulation or preparatory fondling with
21 phenotypically normal, physical mature, consenting human
22 partners. So anything that's outside of that range
23 would be considered paraphilic.

24 Paraphilic disorder, then, is a paraphilic
25 interest that is causing harm or risk of harm to others

1 or is causing significant distress or impairment in the
2 life of the individual. Did you want me to go on about
3 the specific other specified paraphilic disorders?

4 So, you know, other specified paraphilic disorder
5 is absolutely a diagnosis in the DSM. Is the word
6 "nonconsent" listed specifically under "other specified"
7 in the DSM? No, it is not. And I know there's already
8 been some testimony about this diagnosis and there's
9 controversy about it. You know, I know there are social
10 and legal reasons why people are hesitant to identify
11 rape as a mental disorder.

12 But I don't think we can simply say that it just
13 doesn't exist, that there are, you know, no men out
14 there that have an arousal to this pattern. I think it
15 is not something we see often, it's not something I've
16 diagnosed often as well, but I do think it does exist.

17 So then we have to look at -- if we don't have
18 specific criteria, what are some things we consider.
19 And Doren did offer in his book some things we can look
20 at kind of as guidelines to what to consider if you're
21 considering a nonconsent paraphilia. And I think
22 they're really common sense. I think they're things you
23 would consider when looking at other possible paraphilic
24 disorders. So I don't think it's really all that
25 off-the-wall; just kind of seems to make sense to me.

1 And some of these were things, certainly, already
2 discussed by Dr. Hastings. But were there signs of
3 arousal during rape? There were indications, I think,
4 from his statements or victims' statements that he
5 ejaculated, that he completed the sexual act, so I would
6 argue that there was arousal.

7 As far as repetitive pattern, you know, there's
8 not a definite pattern across every offense but you do
9 see some different elements. What he would tend to do
10 is kind of go to a victim uninvited or unannounced,
11 either go into their home, or with Rhonda went into the
12 store, and then when they're kind of unsuspecting, jumps
13 on them and sexually assaults them. And there is a lot
14 of threats, threats to kill, threats to injure if they
15 don't comply, threats to engage in kind of more
16 demeaning sexual acts. And so I do think you see
17 elements of that across his different offenses.

18 You know, looking at his criminal history, he
19 does have nonsexual offenses, certainly. There's also a
20 significant number of his offenses that are sexual in
21 nature, and so that can be suggestive of paraphilic
22 interest.

23 Did he rape when he had a willing sexual partner?
24 You know, if you listen to him in his deposition, it
25 seems that at any given time he was dating one, two,

1 three different women. So I would argue that he did
2 have what would be consensual sexual partners and yet he
3 would still go out and engage in these sexual assaults.

4 There was a short period of time after
5 consequences when he released from prison in --
6 following his conviction for the '87 offenses, it was
7 only eight months until his rape of Nadine in '89. And
8 then when he gets out in what, December 2003, it's about
9 four years before then he has the rape of Linda Burnsed.
10 So again, you're looking from a period of eight months
11 to about two years before he's reoffending. For the '87
12 offenses he only spent a year in custody but then a much
13 more significant time before the Linda Burnsed rape.
14 He's in custody for, like, 12 to 13 years and still gets
15 out and reoffends.

16 Raping in circumstances where there's a high
17 likelihood for being caught. Again, showing up to these
18 homes unannounced, not knowing who might be in the
19 homes, who's gonna come by the homes, raping Rhonda in a
20 store while it's essentially supposed to be open for
21 business, to me are circumstances that there's a high
22 likelihood.

23 So looking at these factors -- did he have
24 various types of victims? Certainly he had a
25 significant age range. I think Sandra was the youngest

1 at 17. Rhonda was 18, but he had victims up into their
2 mid to late 40s. So again, there's a range of victims,
3 which may also be more paraphilic in nature.

4 So looking at these factors, you know, Doren
5 identifies nine factors. The one factor of his that he
6 suggests you could consider is maintenance of a rape
7 kit. I did not find evidence of that, but I did find
8 some degree of evidence for the other eight.

9 Q. And so taken together, your opinion is that he
10 suffers from this paraphilic disorder. Is that correct?

11 A. To me, when I look at the behaviors overall and
12 these different factors, to me, it's not -- again, there
13 are a number of reasons why somebody may rape, but it
14 felt more of a paraphilic interest to me. This wasn't
15 just an antisocial act where in the moment he's just
16 taking it because he wants it. I mean, he made some
17 statements of that. But again, there's this pattern
18 that it's beyond -- it's a very planned, calculated
19 attack. I'd argue that there's fantasy that goes into
20 that, thinking about that and that preparation.

21 And in my opinion, I think, you know, he had the
22 four days between the attempted rape on Sandra and the
23 completed rape on Rhonda. And I think that he was not
24 able to successfully complete the rape with Sandra, I
25 would argue, led to some frustration that then resulted

1 in the rape of Rhonda just days later.

2 THE COURT: Dr. Graney, it says -- so it's
3 other specified paraphilic disorder (nonconsent),
4 specified by whom? By the examiners? Specified
5 somewhere in the DSM? The nonconsent doesn't appear
6 anywhere in the DSM, is that correct? So when we say
7 "specified," who specifies?

8 THE WITNESS: I would say the examiner, the
9 clinician. And really what that is, it's just like
10 with, you know, if you have a substance use disorder or
11 a mood disorder where you have some specifier, or a
12 psychotic disorder, is this the first episode or have
13 they had multiple episodes, it's really just a language
14 for clinicians to talk to each other so we can kind of
15 be all on the same page, "Okay, this is what we're
16 dealing with."

17 And so just to say that somebody has an
18 other specified paraphilic disorder, that leaves it so
19 broad that, you know, you're not really clear what could
20 be the issue.

21 THE COURT: So that would just be other
22 paraphilic disorder.

23 THE WITNESS: Could be any kind of --

24 THE COURT: So by specifying, you clarify
25 what you mean.

1 THE WITNESS: Yeah. It's telling other --
2 really, other providers, other evaluations, that this is
3 what I think is the problem area, this is the disorder
4 this individual's experiencing.

5 THE COURT: So somebody could make one up
6 that day and decide "This is what's going to be my
7 specified, and I can tell you why I'm specifying it"?
8 And it would count?

9 THE WITNESS: So make up a --

10 THE COURT: They can say it's an other
11 paraphilic disorder specified. I've decided that, I
12 don't know, "Marvin the Martian" is now specified. I'm
13 specifying they have a Marvin Martian disorder.

14 THE WITNESS: I mean, technically, could
15 they? Yes. If they said, "I think this person has a
16 specific, intense, problematic attraction to Marvin the
17 Martian," could they have that as a specifier? I mean,
18 some clinician could. But there has to be -- I mean,
19 there really has to be some support that this is a
20 persisting, problematic --

21 THE COURT: They list why --

22 THE WITNESS: -- deviant sexual interest --

23 THE COURT: They list why --

24 THE WITNESS: Yes.

25 THE COURT: But they could. They could just

1 say the first time that anybody's ever said it, but it
2 meets the DSM criteria to say other paraphilic disorder,
3 and I'm gonna specify why.

4 THE WITNESS: Yeah.

5 THE COURT: So it doesn't have to be
6 specified in the DSM.

7 THE WITNESS: That's right. It doesn't have
8 to be -- if it's not one of the formal diagnosis already
9 listed but you think, again, there's enough to say that
10 there is some sort of paraphilic disorder, then the
11 other specified can be used. And the specifier -- I
12 mean, arguably, could somebody come up with their own
13 specifier? Yes.

14 THE COURT: Thank you.

15 BY MS. PRATESI:

16 Q. Dr. Graney, do you consider Mr. Kozohorsky's
17 diagnosis of other specified paraphilic disorder
18 (nonconsent) to be serious?

19 A. I do.

20 Q. And can you just briefly explain to the Court
21 why?

22 A. So you see a pattern of, you know, from when he
23 was 22 up to 41 of, again, these repeated sexual
24 assaults, so that's over an almost 20-year time period
25 where he's been in and out of prison. You know, he

1 claims that these are false allegations. But it's
2 repeatedly created problems in his life with his
3 employment or housing or being labeled as a sex
4 offender. But you see this prolonged period of where
5 it's causing distress and impairment and, more
6 importantly, harm to others, and yet he continues to
7 engage in these behaviors.

8 Q. And, Dr. Graney, when you conducted your
9 evaluation, did you consider any other paraphilic
10 disorders?

11 A. I gave consideration to whether or not he had any
12 sadistic interests, mostly in part to the issue with the
13 Bengay, using the Bengay during the rape of Linda
14 Burnsed. He made some other threats or, you know, to
15 hit his victims or kill his victims. I really think
16 that was solely just to gain compliance. I don't know
17 that there was any specific arousal from those threats
18 or suffering that he was causing by making those
19 threats.

20 In the 1995 letter, which I've seen since the
21 evaluation, there were again some elements that could be
22 suggestive of sadistic interests. You know, one that
23 stood out was talking about inserting a heated curling
24 iron into his wife's vagina. But I agree with what
25 Dr. Hastings said. I don't know if these are simply

1 fantasies. I don't know if he's actually engaged in
2 these acts, so I just didn't think there was enough to
3 make that diagnosis.

4 Q. And, Dr. Graney, even if there was insufficient
5 information to render that diagnosis, do these sadistic
6 elements to some of his offenses still play a role in
7 your overall evaluation of his clinical presentation?

8 A. Well, I mean, it certainly is still concerning,
9 yes, that he, you know, makes these threats toward his
10 victims and that he's, you know, he's in prison serving
11 time in '95 for a sexual offense. He's writing this
12 woman with the intent of getting her to send him sexual
13 stories and pictures of herself and he's, you know, it's
14 this handwritten eight-page letter of this really
15 deviant sexual thoughts, attitudes, fantasies, whatever.

16 So, I mean, that does certainly play into how I
17 view him overall, his risk overall and his paraphilic
18 interests.

19 Q. And, Dr. Graney, you also offered a diagnosis of
20 other specified personality disorder with antisocial
21 features. Is that correct?

22 A. Correct.

23 Q. And can you briefly explain why you diagnosed the
24 other specified personality disorder rather than
25 antisocial personality disorder?

1 A. So, as testified to earlier, to make the full
2 diagnosis, there has to be evidence of conduct disorder
3 prior to the age 15, and I just didn't have evidence of
4 that in the records I had at the time. And I still
5 don't see, and even in the records I've received since,
6 enough information about what was going on at that point
7 in his life.

8 But as an adult he has clearly repeatedly, you
9 know, gotten in trouble with the law by engaging in
10 criminal behaviors or violating conditions of
11 supervision. He's been deceitful. He's admitted that
12 he lied about some offenses, at least, like mentioning
13 that after the rape of Rhonda, he initially lied about
14 that. But I think there's been other instances of that
15 too. Irritability and aggressiveness, you know, lack of
16 remorse for others, he tends to see people as a means of
17 just getting his wants or needs met, you know, that kind
18 of conning or manipulative presentation.

19 He has had some consistent employment. But other
20 areas of his life he's not been, you know, real
21 consistent or had episodes of irresponsibility of kind
22 of just bouncing around place to place while looking for
23 work and not registering, and things of that nature.

24 I will say that while he's been in the Bureau of
25 Prisons I know, you know, it's been mentioned that he's

1 had no write-ups. Antisocial personality features can
2 diminish with age. I mean, that could be a factor. But
3 you also see guys in the community where it's a less
4 confined, you know, controlled environment, the
5 antisocial features are more prominent. And then when
6 they're in that highly controlled prison environment, it
7 can be a little muted.

8 So not really prevalent in the time that he's
9 been in prison, but definitely notable in his time in
10 the community.

11 Q. And, Dr. Graney, how, if at all, in your opinion,
12 did Mr. Kozohorsky's diagnoses interact with one
13 another? The paraphilic disorder and the personality
14 disorder.

15 A. So I definitely think, you know, the presence of
16 the antisocial traits exacerbates his risk just because
17 of that, you know, lack of remorse for others,
18 willingness to use others for his own purposes, not
19 learning from consequences. So that increases,
20 arguably, his risk to then act on those paraphilic
21 interests.

22 Q. Dr. Graney, lastly I just want to briefly touch
23 on your diagnosis of alcohol use disorder. What
24 information did you utilize to render that diagnosis?

25 A. So he -- he didn't describe a significant history

1 of alcohol use, based on the records, but I did note
2 that he had a few DWIs. He violated a period of
3 probation by consuming intoxicants. I think he had
4 mentioned when I did my report that he was under the
5 influence, at least during one offense, and then
6 there's, I think, some evidence that may have been an
7 issue at least in his rape with Linda Burnsed as well.

8 So, but anyway, at the time I did my evaluation,
9 I thought based on those elements, the DWIs, the
10 violating, the use and situations that put others at
11 harm or risk was sufficient to at least say the presence
12 of a mild alcohol use disorder.

13 Q. And how, if at all, might such a diagnosis
14 interact with, again, the paraphilic disorder and the
15 personality disorder?

16 A. I mean, again, just reducing inhibitions, making
17 him more likely to act on impulses or urges while under
18 the influence.

19 Q. And so, Dr. Graney, as a whole, in your
20 professional opinion, does Mr. Kozohorsky suffer from a
21 serious mental illness, abnormality, or disorder?

22 A. Yes, I believe he does.

23 Q. And finally, Dr. Graney, I want to ask you some
24 questions about prong 3. Did you form an opinion as to
25 whether Mr. Kozohorsky will have serious difficulty

1 refraining from child molestation or sexually violent
2 conduct if he's released?

3 A. I did.

4 Q. And what evidence did you rely on in arriving at
5 that conclusion?

6 A. So I certainly looked at his history, you know,
7 which we've discussed, and the fact that I diagnosed him
8 with having a paraphilic disorder. You know, his Static
9 score was discussed. I also came up with a score of 4,
10 putting him in the above average range.

11 And then I looked at various dynamic risk
12 factors, which for him the most prevalent ones were
13 related to intimacy deficits, problems with sexual
14 self-regulation, problems complying with supervision,
15 and then some degree of just problems with general
16 self-regulation as well.

17 Q. Dr. Graney, if I can just return you briefly to
18 your Static score, you indicated that you gave him a
19 score of 4, correct?

20 A. Correct.

21 Q. And that was the above average risk category?

22 A. Yes.

23 Q. What effect, if any, does that score have on his
24 projected risk of sexual recidivism?

25 A. What does that score have --

1 Q. Or what does it mean? I'm sorry.

2 A. Well, again, some of this I feel like is
3 repetitive, but that score would put him into the almost
4 80th percentile and twice as high likelihood of
5 recidivism as compared to the typical sex offender.

6 Q. And do you believe that the score accurately
7 reflects his risk of reoffense?

8 A. I would actually say that based on the other
9 factors, the dynamic risk factors, some of his attitudes
10 and beliefs and some of his cognitive distortions, that
11 his risk is a little higher than maybe the static would
12 suggest.

13 Q. And so let's touch on some of those dynamic risk
14 factors that you mentioned. Did you use any particular
15 assessment measure when you considered them?

16 A. I just used factors that are identified in the
17 Stable, Stable-2007.

18 Q. And what is the Stable-2007, just briefly?

19 A. It's used to look at the presence of dynamic risk
20 factors often in community supervision. But a lot of
21 the factors covered here are supported by research to --
22 not any one factor is indicative of increased risk, but
23 when you look at the factors together, are there
24 multiple factors present that would argue that overall
25 it's gonna increase the risk of sexual reoffense.

1 Q. And I believe you mentioned intimacy deficits as
2 one of the more salient factors for Mr. Kozohorsky, is
3 that right?

4 A. Yes. So for Mr. Kozohorsky, he was -- he was
5 involved in a relationship with Mary. I think they
6 stated dating around 1982, married in '87, stayed
7 married until '94. He had committed two of the rapes
8 during that time that he was involved in a relationship
9 with her. I also did see in the record where there was
10 statements from the 2004 report that he had admitted to
11 acts of marital rape while he was married to her,
12 repeated instances of infidelity, and that was
13 throughout his relationships with other women. Again,
14 he was usually dating multiple women at any one time.
15 And then he has also described -- more recently I know
16 he's described the use of -- significant use of
17 prostitutes in more recent years.

18 But just not a lot of relationship stability, not
19 a lot of emotional intimacy there. Women seem to be,
20 you know, more objectified, that they were a means to
21 satisfy his needs, and often just his sexual needs.

22 Q. And what evidence did you see of problems with
23 his sexual self-regulation?

24 A. For problems with sexual self-regulation,
25 obviously the repeated sexual assaults over a period,

1 really, of what's almost 20 years, repeating after
2 serious consequences. He's not had issues with sexual
3 preoccupation that we've seen while he's been in
4 custody, but again, I don't think there was evidence of
5 that during his prior incarcerations, and yet he got out
6 to sexually reoffend.

7 But again, when he's in the community he's dating
8 multiple women, having sex with multiple women, having
9 sex with prostitutes, engaging in these sexual assaults,
10 even while under probation at times; so evidence of
11 problems with sexual self-regulation and of course the
12 deviant sexual interests that we already spoke about.

13 One of the other factors that kind of falls under
14 the intimacy deficits is I definitely think there's
15 hostility toward women. You can hear that in some of
16 his statements and some of his attitudes. You know,
17 there was a letter written by Jeannette, which was one
18 of the women he dated, and she talked about him always
19 having these attitudes that women were inferior and were
20 there just to meet the needs of men.

21 And in the 1995 letter where he's going, you
22 know, through his sexual fantasies or whatnot, he
23 repeatedly refers to women in very derogatory terms.

24 And I think even in his recent deposition there
25 was evidence of still some hostility and just

1 objectification of women. He would talk about, again,
2 that this is kind of just what women do when they're
3 upset with men, they accuse them of rape, and here he is
4 in a deposition for possible civil commitment, and he
5 repeatedly made offhanded comments about the physical
6 appearance of women, talking about oh, that woman was
7 really beautiful, that woman was really attractive, and
8 even speaking about one of -- I think it was Christine
9 but, like, gave her measurements, like her waist and
10 buttocks measurements, which to me was odd in the course
11 of a deposition, you know.

12 So I think there's just again some evidence of
13 that objectifying women and some of those hostile
14 attitudes toward women.

15 Q. Dr. Graney, can you touch on cooperation with
16 supervision as a dynamic risk factor?

17 A. Yes. So he's had repeated instances of violating
18 conditions of probation or supervision even as young as
19 15. It was 1990 or 1991, I think there were two
20 different dates in some of the records, he was on
21 community release and awaiting sentence for the 1989
22 offense, and that's when he had the charge for burglary
23 and terroristic threatening which involved him returning
24 to the home of one of his victims, which I think was
25 Nadine. And then of course he's, you know, had

1 violations for using intoxicants or driving while
2 impaired. You know, he's had the issues with failing to
3 register. He had another theft charge sometime around
4 2008 or so.

5 So even periods while he's on probation he's
6 either committing new offenses or violating, failing to
7 register.

8 Q. And finally, Dr. Graney, can you touch on general
9 self-regulation, please?

10 A. So general self-regulation was -- wasn't as
11 prominent, but you would see elements of that. You
12 know, again, his driving while intoxicated and violating
13 conditions of supervision. Poor cognitive
14 problem-solving I do think is an issue that you see kind
15 of throughout, you know, a span of years and is still
16 present. You know, while he's been more recently in the
17 CTP, he's written a lot of letters to the central office
18 in the BOP and maybe different politicians, whatever,
19 complaining about the conditions of confinement, and
20 everything is very kind of externally focused, and he
21 was doing the same thing during his '95 incarceration as
22 well, writing to different politicians and whatnot,
23 complaining about the jail conditions.

24 And so even though more recently with the CTP,
25 he's been encouraged to try other more prosocial ways to

1 address his concerns with institutional staff and
2 whatnot, you know, he continues to kind of write these
3 letters and air his grievances, and I just think there's
4 some elements of poor problem-solving that you see in
5 those behaviors as well.

6 Q. And, Dr. Graney, how if at all do these dynamic
7 risk factors weigh into your analysis of whether
8 Mr. Kozohorsky will have serious difficulty refraining
9 from sexually violent conduct if he's released?

10 A. I think these factors overall increase his risk
11 of engaging in sexual reoffense.

12 Q. And, Dr. Graney, when you conducted your
13 evaluation, did you consider whether there were any
14 protective or mitigating factors for Mr. Kozohorsky?

15 A. I did, some of which, again, were already spoken
16 to, but things like any medical conditions which would
17 limit his ability to reoffend, or advanced age, or being
18 in the community for a significant period of time
19 without reoffending, but none of those factors were
20 present, and he has no history of sex offender
21 treatment.

22 Q. And just touching on sex offender treatment,
23 you're aware that Mr. Kozohorsky has begun to
24 participate in the CTP, correct?

25 A. Correct.

1 Q. And have you had the opportunity to review the
2 psychology records from the Bureau of Prisons?

3 A. I have, yes.

4 Q. And what, if anything, or how if at all does that
5 information contribute to your overall opinion of his
6 volitional control or lack thereof?

7 A. Well, I mean, I'm glad to see that he's in
8 treatment, but he certainly is not -- you know, at this
9 point, if he is in phase 2, I would argue that he's
10 certainly not received enough treatment that I'm gonna
11 say it mitigates his risk. I don't know how recently he
12 moved into phase 2. But the notes I saw from -- since
13 he's entered treatment -- you know, he's kind of doing
14 the basics of what's expected of him but doesn't seem to
15 be a real full commitment. Like sometimes he's missed
16 treatment groups because he decided he'd rather stay on
17 the recreation yard, or he didn't fully complete
18 assignments. Or for, like, community meetings, notes,
19 you know, he's very focused on the problems on the unit
20 or what other people are doing wrong. There's not a lot
21 of really looking internally at what he needs to do for
22 himself. He talks about wanting to make change but then
23 continues to deny most of his sexual offenses, continues
24 to minimize or blame other people, whether it's the
25 victims or law enforcement or the court system.

1 So I would say at this point it's really more of
2 a superficial level of participation, and my hope would
3 be that, you know, if he continues with treatment, that
4 they can continue to work with him on some of that and
5 kind of start breaking some of that down so he'll start
6 to get some more benefit from it.

7 Q. And in addition to those treatment records and
8 everything that you've just discussed, did you also have
9 the opportunity to read his readiness statement?

10 A. Yes.

11 Q. And did you feel that that reflected a true, you
12 know, willingness to participate, or anything like that?

13 A. No. Again, it was really -- I mean, he
14 acknowledged the rape of Rhonda, but really, again,
15 suggested that he's had no other history of violent
16 sexual offenses. And again, there wasn't a lot of depth
17 to it. He says yes, I'm ready to change, but there
18 wasn't a lot beyond that statement. And a lot of it was
19 focused -- I think he said something to the, you know,
20 extent of -- kind of like "I'm ready to make my future
21 better and do better for me," but it was all kind of
22 about him. There was really no recognition of the harm
23 he's caused or trying to prevent future harm. It was
24 just really what can I do to make me better, my life
25 better, but really no specific statement about the harm

1 that he's caused or, again, any future concerns about
2 maybe engaging in similar conduct.

3 Q. And when you were reviewing the CTP records, did
4 you see any evidence that he's learned any of the tools
5 that he might, theoretically, be able to learn in sex
6 offender treatment?

7 A. I think he had made mention that he had done some
8 rational self-analysis exercises, that he had done,
9 like, a few of those and felt a little bit better about
10 them. So like identifying problematic situations and
11 his thoughts and subsequent behaviors that go with those
12 and kind of really focusing on those.

13 But beyond that, I don't recall anything specific
14 about specific skills that he's talked about using or
15 implementing.

16 Q. And as he testified today, did you still see
17 evidence of cognitive distortions or thinking errors?

18 A. I would say so, yeah. Again, just his
19 minimization of things. I mean, if you listen to kind
20 of his story overall, you know, he makes it sound like
21 he's just this incredibly unlucky man, right? If you
22 think about the number of rapes that go unreported and
23 the low percentage of actually false rape allegations,
24 for him over the course of 20 years to have multiple
25 women falsely accuse him of rape, you know, again, he's

1 just kind of looking at the outside and blaming the
2 victims and blaming women's attitudes and blaming the
3 justice system, but doesn't look like he's ever really
4 taken a look at himself, like what might I be doing
5 wrong that all of this is happening around me.

6 And so, you know, that remains concerning, that
7 20, 30 some years later, his attitudes have really not
8 changed much, his views on things and some of these
9 distortions have not really changed much.

10 Q. And finally, Dr. Graney, I just want to ask you
11 some questions about his supervision. You've heard
12 testimony today that he has lifetime federal supervised
13 probation, correct?

14 A. Correct.

15 Q. And in your opinion, are his standard and special
16 conditions of supervised release sufficient to mitigate
17 his risk if he were released?

18 A. No.

19 Q. And why not?

20 A. The information I saw when I completed my
21 evaluation is, you know, there were a few just kind of
22 really generic conditions mostly about, you know, not
23 consuming alcohol, and there may have been something in
24 there, I can't recall clearly, about something with
25 minors, but that's really not his issue, right?

1 So maybe he's used alcohol during some offenses
2 but, you know, that's not a primary issue for him with
3 his offense conduct. He doesn't really have evidence
4 of, other than maybe the 17-year-old, of issues with
5 minors.

6 So the offense behaviors he engages in, these
7 conditions wouldn't really prevent him from being in
8 those kind of same situations. You know, they're not
9 gonna mitigate that risk. He's the guy that would meet
10 a lot of these women in the course of his work and then
11 show up uninvited to their homes and walk on in and then
12 suddenly engage in a sexual assault.

13 So the conditions are not something that would,
14 to me, mitigate his risk. To me, what would mitigate
15 his risk, hopefully, is his involvement in treatment,
16 getting a better understanding of his offense behaviors,
17 and learning skills to manage those deviant sexual
18 interests and his general behavior in the community.

19 Q. And in your opinion, would that sex offender
20 treatment need to take place in a secured environment?

21 A. For now it does, yes, I think so.

22 Q. And in your opinion, are there any terms of
23 supervision currently that would be sufficient to
24 mitigate his risk of sexual dangerousness?

25 A. Not that I can think of, no.

1 Q. Dr. Graney, what, if any, other information did
2 you consider or rely upon in forming your opinion that
3 we haven't already covered?

4 A. I can't think of anything. I think we've covered
5 it.

6 Q. And so, Dr. Graney, for the record, what is your
7 ultimate opinion as to whether Mr. Kozohorsky meets
8 criteria for civil commitment?

9 A. It is my opinion that he does meet criteria for
10 civil commitment.

11 Q. And that's because he would have serious
12 difficulty refraining from sexually violent conduct if
13 released, correct?

14 A. Correct, as a result of his mental disorders.

15 MS. PRATESI: Thank you, Dr. Graney.

16 THE WITNESS: Thank you.

17 MS. PRATESI: I have no further questions,
18 Your Honor.

19 THE COURT: Your witness, counsel.

20 MS. SHEA: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. SHEA:

23 Q. Good afternoon, Dr. Graney.

24 A. Good afternoon.

25 Q. I want to ask you about a section in your report,

1 it's on page 24, called "Significant Social Influences."
2 In preparing that section of your report, you listened
3 to some of Mr. Kozohorsky's phone calls, is that right?

4 A. Correct.

5 Q. And they were with a man named Marshall Ghan.
6 Do you remember that?

7 A. Yes.

8 Q. And you wrote that there was no evidence of
9 sexual content in those conversations, right?

10 A. Correct.

11 Q. And that they appeared, overall, positive, right?

12 A. Yes.

13 Q. That that might be a supportive relationship for
14 him to have as a friend.

15 A. Yes.

16 Q. You also noted in your report on page 26 that his
17 prison conduct has largely been unremarkable, right?

18 A. Yes.

19 Q. In terms of infractions -- and you conceded in
20 your direct testimony that he has not received any
21 infractions since he's been incarcerated during the
22 federal sentence, right?

23 A. Correct.

24 Q. And you also just testified that he had lifetime
25 supervised release, right?

1 A. Correct.

2 Q. And that he has joined the CTP program, right?

3 A. Yes.

4 Q. So I want to ask you about your reliance on
5 Mr. Kozohorsky having allegedly committed marital rape.

6 A. Okay.

7 Q. You'd agree that you rely heavily on this, right?

8 A. I don't rely heavily. It's certainly a factor.

9 Q. Would it surprise you that you mentioned it no
10 fewer than eight times in your report?

11 A. That's certainly possible. I haven't counted.

12 Q. So I want to focus on your support for this.
13 You're aware that he's never been convicted of marital
14 rape, right?

15 A. Yes.

16 Q. You're aware that he's never been charged with
17 marital rape, right?

18 A. Correct.

19 Q. You're aware that his wife has never actually
20 accused him of marital rape, right?

21 A. To my knowledge, yes.

22 Q. So let's look at where that comes from. In your
23 report on page 3 under relationship and sexual history,
24 that's the first time that you make note of this
25 allegation.

1 A. Correct.

2 Q. And you cite a 2004 sex offender screening and
3 risk assessment done by the Arkansas Department of
4 Corrections. Do you see that?

5 A. Yes.

6 Q. And it says "where the inmate reportedly admitted
7 to 'forcing his wife to have sex with him against her
8 will.'" Do you see that?

9 A. Correct.

10 Q. And for that proposition, you were relying on the
11 PSR, which is what you had at the time, right?

12 A. I'm relying on the PSR author's scription or
13 inclusion of the 2004 screening.

14 Q. That's right. And so turning to the PSR, that's
15 Government Exhibit 7, and that's paragraph 50 of that
16 report which is at page 12 to 13.

17 A. Okay.

18 Q. And that's a summary of the September 20th, 2004,
19 risk assessment authored by George Simon. Do you see
20 that?

21 A. Yes.

22 Q. And that's where you're citing it to, right?

23 A. Yes.

24 Q. Did you notice that Mr. Kozohorsky objected to
25 the information in Dr. Simon's report as being untrue?

1 That's at page 19 of the same exhibit. Did you notice
2 that he objected to that?

3 THE COURT: It's also in the same paragraph
4 on page 13.

5 THE WITNESS: Oh, okay.

6 MS. SHEA: Yes, Your Honor, it is.

7 BY MS. SHEA:

8 Q. It's also in that same section and it's in the
9 addendum.

10 A. Okay, that he indicates the information in this
11 paragraph is unreliable and untrue, yes.

12 Q. You chose not to include that in your report,
13 right?

14 A. Clearly, I didn't. Yes.

15 Q. And so you actually tried to seek out the
16 documentation of this, right?

17 A. Yes.

18 Q. But you couldn't receive any additional records
19 when you attempted to contact the probation officer and
20 the U.S. Attorney's Office, right?

21 A. Correct.

22 Q. So let me bring you to Government Exhibit 20.

23 A. Okay.

24 Q. Have you since had a chance to review this?

25 A. Yes.

1 Q. Do you see that it's titled "Sex Offender
2 Screening and risk assessment"? It's dated September
3 20th, 2004, and has a signature line for Dr. Simon.

4 A. Yes.

5 Q. Please highlight in this report where it says
6 that Mr. Kozohorsky admitted to engaging in marital
7 rape.

8 A. I don't see it -- I don't see it listed in that
9 screening but that -- it doesn't look -- I was looking
10 to see if the information in that screening matches what
11 was listed in the PSR. I was actually, when I saw this
12 record, surprised that it was only one page, so I didn't
13 know if there was more to it or not.

14 Q. Have you seen any other pages?

15 A. I have not.

16 Q. Are you aware of any other documents with that
17 title?

18 A. Not in the materials that I've received, no.

19 Q. And so you don't know what the PSR is citing to,
20 do you? Well, it's citing to a document that doesn't
21 say it, right?

22 A. If that's what it's referring to, if it's
23 referring to this one specific page, then no, I don't
24 see it in the actual risk assessment.

25 Q. Does that cause you to change your opinion about

1 including that allegation? Because the PSR is citing to
2 an assessment that doesn't say what it purports to say?

3 A. I was trying to think if there was anyplace else
4 that I remember seeing that information or cited it. So
5 if the information came exclusively from the PSI quoting
6 that document, and that is the only document and it's
7 not in there, then perhaps that is inaccurate
8 information. I don't -- perhaps it is. I don't know if
9 there's anything else that supports that.

10 Q. Let me ask you about another quote. This is also
11 from the PSR's summary, I guess, of this assessment, and
12 this one actually is a verbatim quote. So it's this
13 sentence in the 2004 assessment. I'm in Exhibit 20.

14 A. Okay.

15 Q. Under "Aggravating/Mitigating Factors," and so it
16 says, "There is ample credible documentation that he has
17 committed even more such acts than his official
18 conviction record reflects." Do you see that?

19 A. Yes.

20 Q. And you actually quote that repeatedly in your
21 report as well.

22 A. Yes.

23 Q. Sitting here today, do you know what is the
24 credible ample documentation that this 2004 author is
25 relying on?

1 A. No, I don't.

2 Q. And in light of the fact that you don't know what
3 the author is relying on, would you like to amend your
4 opinion to not rely on it?

5 A. So the reason I'm hesitating is because -- so I
6 get what you're saying. Yes, I don't know for a fact
7 where they got this credible documentation from.
8 Because this was a report written by somebody in the
9 Arkansas DOC, I don't know if they had access to
10 something else that I haven't seen.

11 I would say, though, that based on the fact that
12 he's had five -- whether he calls them allegations or
13 not, and we consider the fact that most rapes go
14 unreported, I would almost argue that there's probably
15 some behaviors he's engaged in that we don't know about.
16 And he even during his deposition made a remark that --
17 I think it was when he was arrested for the offense
18 against maybe Nadine or -- but anyway, that it went out
19 on the radio that he had been arrested for this and that
20 multiple women came forward and accused him of rape.

21 So again, I know that's -- is that not -- it's
22 not credible, it's not solid, but do I take it into
23 consideration and do I take into consideration that he
24 probably has committed offenses that we don't know
25 about? I do think that there's a good likelihood of

1 that.

2 Q. That's pure speculation, though, right,
3 Dr. Graney?

4 A. Based on -- well, it is, but based on the fact
5 that, again, there are a large number of sexual assaults
6 that go unreported. I don't think every victim has come
7 forward.

8 Q. But we're in the business of clear and convincing
9 evidence, right? So where is the clear and convincing
10 evidence that this author in 2004 -- what is he relying
11 on? Do you know?

12 A. Well, so then --

13 Q. And do you -- sorry. I'm sorry.

14 A. That's okay.

15 Q. And do you choose to rely on that unknown
16 documentation, sitting here today?

17 A. So am I assuming that -- I'm assuming if another
18 clinician puts this in their report that they have
19 credible documentation, that they've done something to
20 make sure that that is, in fact -- whether it's a police
21 report or some sort of narrative, I'd assume there's
22 something there for them to include that.

23 Q. You assume but you don't know, right?

24 A. I don't know.

25 Q. And you don't know what he looked at, right?

1 A. I don't know what he looked at.

2 Q. And so my question is are you choosing to rely on
3 these unknown mystery documents? Is that what you
4 choose to do today?

5 A. I'm relying on another clinician that says they,
6 in fact, have information that says there were other
7 credible assertions, I guess, credible documentation
8 that he's committed other acts.

9 Q. I'm gonna move on to the 2010 accusation by
10 Christine Harvey. Would you agree that you rely heavily
11 on this accusation?

12 A. Again, I didn't rely heavily on it because there
13 were no -- she just said she was sexually assaulted.
14 There were no details as to the sexual assault.

15 Q. Would it surprise you if you noted that
16 accusation no fewer than 12 times in your report?

17 A. That's possible. I am repetitive in my reports.

18 Q. Would it surprise you that it was in your final
19 prognosis paragraph and your penultimate serious
20 difficulty refraining paragraph? Would that surprise
21 you?

22 A. No, it wouldn't surprise me. I mean, I
23 considered all factors that went into my opinion.

24 Q. So you're aware that he was never convicted of
25 that sexual assault, right?

1 A. Correct.

2 Q. You're aware that he was never even charged with
3 that sexual assault, right?

4 A. Correct.

5 Q. And you're aware, I believe you noted it in your
6 direct testimony, that the government conceded that that
7 enhancement did not apply -- right? -- at his sentencing
8 for his SORNA offense. There was a six-level
9 enhancement for committing a sex act while in failure to
10 register status that was withdrawn.

11 A. Yes. And I don't know why they conceded, but
12 yes, they conceded.

13 Q. And you actually tried to find out why, right?

14 A. Correct.

15 Q. And you called the U.S. Attorney's Office, right?

16 A. Correct.

17 Q. And the AUSA who handled the case had become a
18 magistrate judge, right?

19 A. Yes.

20 Q. So you talked to someone else, right?

21 A. Yes.

22 Q. And he said he didn't know why -- right? -- it
23 was withdrawn.

24 A. Correct.

25 Q. That's what he said, right?

1 A. Yeah.

2 Q. So that doesn't really move the needle anyway,
3 right?

4 A. Correct.

5 Q. But despite the government conceding this
6 enhancement didn't apply, despite him never being
7 charged, you mentioned it 12 times in your report,
8 right?

9 A. Mm-hmm. He's somebody that at that point had
10 already had three convictions, and what I would argue
11 was yet another attempted assault. So it's not like
12 this was the first woman to ever accuse him of sexual
13 assault.

14 Q. Let me have you turn to Government Exhibit 10. I
15 know you didn't have this at the time that you wrote
16 your report, but have you since had a chance to review
17 it? It's the police report from 2010.

18 A. Yes.

19 Q. On the first page, this is in the "Incident
20 Narrative" section, it just says that she was sexually
21 assaulted and choked several times by Mr. Kozohorsky.
22 Do you see that?

23 A. Yes.

24 Q. And then the whole rest of the time -- the whole
25 rest of this paragraphs all talk about a physical

1 assault. Do you see that?

2 A. Correct.

3 Q. You'd agree that "sexual assault" is a really
4 broad term, right?

5 A. Correct.

6 Q. Encompasses everything from a forceable rape to
7 an unwanted pat on the rear end, right?

8 A. Yeah, yes.

9 Q. So there's no details about what even was
10 alleged, right?

11 A. Correct.

12 Q. At all. I want you to look at the first page of
13 this report under "Offenses." Do you see that?

14 A. Under what now?

15 Q. "Offenses."

16 A. "Offenses."

17 Q. It's like --

18 A. Okay.

19 Q. -- a gray kind of section. And it lists three
20 offenses that were being investigated: assault,
21 unlawful use of a weapon, armed criminal action. Do you
22 see that?

23 A. Yes.

24 Q. It doesn't even include sexual assault. It
25 doesn't even include rape. Do you see that?

1 A. Yes.

2 Q. Do you find it unusual that someone with three
3 rape convictions would not be charged with rape by
4 officers confronted with credible evidence of a rape?

5 A. Can you repeat that?

6 Q. Do you find it unusual that someone with three
7 rape convictions would not be charged with rape by
8 officers confronted with credible evidence of rape?

9 A. Do I find that unusual? I probably would find it
10 unusual. I don't know all the ins and outs of how the
11 police do their business, but yes, I would say generally
12 I would find that unusual.

13 Q. I'm gonna move to the 2006 offense. That's the
14 offense involving a woman named Linda, right?

15 A. Correct.

16 Q. And you've heard Mr. Kozohorsky testify, and in
17 his interviews with the other examiners he vehemently
18 denies this offense, right?

19 A. Correct.

20 Q. And he claims that this was -- this encounter was
21 recorded by him, right?

22 A. Yes.

23 Q. And that the recording would exonerate him,
24 right?

25 A. Yes.

1 Q. You're aware that Linda initially claimed that
2 Mr. Kozohorsky anally raped her four times, right?

3 A. Correct.

4 Q. And that initially he was charged with four
5 counts of forceable rape, right?

6 A. Yes.

7 Q. And you're aware that Mr. Kozohorsky accepted a
8 plea agreement with a suspended sentence, right?

9 A. Yes.

10 Q. And that the plea agreement was to attempted rape
11 and not rape, right?

12 A. Yes.

13 Q. In your opinion, as someone who's evaluated a lot
14 of sex offenders, is it unusual for you to see a
15 three-time rape offender get a suspended sentence?

16 A. You know, I really can't say. Most of the
17 individuals I evaluate are not for sexual assaults.
18 Most of them are involving children. So we don't see a
19 lot of these, or at least I didn't when I was in the
20 Bureau. I can't say why that might have been pled down
21 to an attempted rape.

22 I'm looking -- I understand there are all sorts
23 of things that can happen legally with things that I'm
24 not familiar with. But, clinically, when I'm looking at
25 a case, I'm looking at a pattern of behaviors and is it

1 reasonable to believe that this is something that I
2 should consider from a clinical point.

3 Q. Well, let me ask you this question: Does the
4 fact that he was able to plead it down to attempted rape
5 cause you to have any hesitation with crediting whole
6 cloth Linda's version of events?

7 A. Does the fact that it was pled down to attempted
8 make me question her version of events? But it was
9 still -- whether it was a rape or an attempted rape, to
10 me, doesn't make -- I mean, either -- "attempted," to
11 me, says maybe that it wasn't completed or he was
12 working up to that, but my guess, there was enough there
13 to say that that was his intention.

14 Q. Does the fact that Mr. Kozohorsky was allowed to
15 plead to a suspended sentence with no active time rather
16 than facing the life sentences that the forceable rape
17 carried cause you to have any hesitation with accepting
18 whole cloth Linda's version of events?

19 A. Given that -- again, given his history leading up
20 to that, I considered her credible, I guess is all I can
21 say. I considered it a credible account, and there
22 ultimately was a conviction.

23 Q. Would you agree that we don't know exactly what
24 happened between Linda and Mr. Kozohorsky?

25 A. I mean, I don't know the exact series of events.

1 I know there was some degree of to what extent some of
2 it may have been consensual or if they had, you know, to
3 what degree they had a relationship up to that point.
4 But looking now at the records that I've received since,
5 I would say that some of her statements are consistent
6 with his behavior in prior sexual assaults.

7 Q. Doesn't it matter, though, what specifically
8 happened and how it happened for the purpose of you
9 finding that Mr. Kozohorsky is specifically aroused to
10 nonconsent?

11 A. I mean, it is important, but I have to work with
12 the information that I have. I'm not gonna always have
13 every detail. So I have to take the information that I
14 do have and try to make sense of it from a clinical
15 perspective.

16 Again, I would say that the information I've
17 since received I think adds further support that it was
18 a sexual assault, not to mention that he was ultimately
19 convicted of a sexual assault, or attempted, at least.

20 Q. Let me ask you a few questions about your
21 diagnostic findings. You did not offer a diagnosis of
22 sexual sadism, right?

23 A. Correct.

24 Q. You did offer a diagnosis of personality disorder
25 not otherwise specified, right?

1 A. Correct.

2 Q. And in page 27 of your report, you wrote
3 specifically that that was, quote, "arguably a
4 contributing factor," right?

5 A. What paragraph are we on?

6 Q. I think it's the last paragraph on page 27.
7 Yeah. It's the second to last line of that page.

8 A. Yeah.

9 Q. The primary diagnosis that you find supports your
10 opinion is the paraphilia not otherwise specified
11 (nonconsent), right?

12 A. Yes.

13 Q. You'd agree that this diagnosis has been
14 specifically rejected by the DSM, right?

15 A. Yes.

16 Q. And you acknowledge in your report that men rape
17 for different reasons, right?

18 A. Correct.

19 Q. On page 17, you wrote specifically that it should
20 be emphasized that not all individuals who rape, even
21 repeatedly, are considered to have a paraphilia, right?

22 A. Correct, yes.

23 Q. And you outlined nine criteria to determine if
24 this applies, right?

25 A. Guidelines or factors to consider, yes.

1 Q. And those are from a book authored by Dennis
2 Doren, right?

3 A. Correct.

4 Q. Did you reread it recently? Have you reread it
5 recently?

6 A. Have I reread it recently? No.

7 Q. Would it surprise you if the opening line of that
8 chapter says "This category probably represents the most
9 controversial among the commonly diagnosed conditions
10 within the sex offender civil commitment realm"?

11 A. No, that wouldn't surprise me.

12 Q. Do you know of any empirical evidence to support
13 a finding that these specific factors lead to that
14 diagnosis?

15 A. Do I know of any empirical support to say that
16 these specific factors lead to that diagnosis? No.

17 Q. And there's no tool that you can use to say that
18 these factors are present, right?

19 A. Correct.

20 Q. You testified one of the factors that you found
21 to apply to him was that he had access to consenting
22 partners, right?

23 A. Correct.

24 Q. And in your testimony, you are crediting his
25 deposition testimony that he had access to consenting

1 partners, right?

2 A. Correct.

3 Q. There's no way to truly know if he was more
4 aroused by the rapes that he committed than by sex with
5 consenting partners that he had, is there?

6 A. Is there a way to know if he was more aroused by
7 the nonconsensual? Well, I would argue that if he had
8 consensual sexual partners, the fact that he was going
9 out and engaging in forced, violent, clearly
10 nonconsensual sexual encounters, whether it was to a
11 greater degree than the sexual, he -- still getting some
12 satisfaction from that.

13 Q. I guess my question is there's no way to know
14 that it was a -- that he was more aroused to
15 nonconsensual sex than he was to consensual sex.
16 There's no evidence. There's no way to prove that.

17 A. If not more aroused, I would argue equally
18 aroused because he was able to complete the sexual act
19 and -- so he maintained arousal, certainly. There's no
20 evidence that it diminished his arousal.

21 Q. One of the offense descriptions that you have in
22 here, it's on page 7. You're quoting a police report
23 from the '89 offense. And in that -- it's kind of like
24 the indented block quote. It says, "He also said that
25 he had been wanting her for years, and if he had to rape

1 her, he would." Do you see that?

2 A. Yes.

3 Q. Doesn't that sort of indicate that he preferred
4 not to rape her, and he would only rape her if he had
5 to?

6 A. Well, this was one statement with this one
7 victim, but there are, again, the other sexual offenses
8 of a similar nature.

9 Q. I was just asking about that statement, though.

10 A. Yeah.

11 MS. SHEA: Can I have just one moment, Your
12 Honor?

13 THE COURT: You may.

14 MS. SHEA: Thank you, Your Honor. Those are
15 my questions.

16 THE COURT: Dr. Graney, I'm gonna ask a
17 hypothetical -- there's no evidence that this Court
18 finds credible regarding the 2006 event, particularly
19 given the audiotape that's been mentioned. If the Court
20 discounts that event, doesn't the significant additional
21 period of time without offense in the community, does
22 that make a difference to you at all? And,
23 hypothetically, if you were to discount that, say, "I
24 just don't believe that event occurred the way it's been
25 categorized," that is I hypothetically changed it, just

1 say it doesn't exist, what effect would that have on
2 your opinion?

3 THE WITNESS: So not -- so you're not
4 referring to the 2010, you're referring to the 2006.

5 THE COURT: The one where -- I think it's
6 C.H. is the victim.

7 THE WITNESS: Oh, C- -- okay. So the
8 2010 --

9 THE COURT: Is it 2010? I misstated the
10 date. I'm sorry.

11 THE WITNESS: Yeah. No, I just wanted to
12 make sure I understood you correctly, Your Honor. So I
13 do cite it in the report. If you were to remove that,
14 would it change my opinion? It would not. Because
15 again, prior to that, he's had these repeated incidents
16 of, again, violent sexual assaults, consequences,
17 reoffending not long after, and kind of very same
18 method, so...

19 THE COURT: So it's additional weight but
20 not decisive.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you. Redirect?

23 MS. PRATESI: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. PRATESI:

1 Q. Dr. Graney, a very similar hypothetical question.
2 If there was no evidence, or if we somehow had
3 conclusive evidence that there was no marital rape,
4 would that change your opinion in this case?

5 A. Again, no. I mean, if it's there, that's
6 certainly, to me, a supporting factor. But if you take
7 that out, he's had, again, still multiple victims
8 outside of that, so -- so no. You know, he made some
9 statements in that '95 letter about his sexual
10 interactions with his wife. To what extent those were
11 consensual or not, I have no idea. But yes, even if you
12 remove the marital rape, I still would say there's
13 enough there to say that the diagnosis is still there
14 and the risk is still there.

15 MS. PRATESI: Thank you, Dr. Graney. No
16 further questions.

17 THE COURT: Redirect?

18 MS. SHEA: No, thank you, Your Honor.

19 THE COURT: Thank you, Dr. Graney.

20 THE WITNESS: Thank you.

21 MS. PRATESI: Your Honor, the government has
22 no further witnesses.

23 THE COURT: Okay.

24 MS. COSTELLO: Your Honor, we call
25 Dr. Leonard Bard.

1 THE COURT: I'll ask the parties, if they
2 know, does anybody know if there exists a copy of that
3 audiotape?

4 MS. COSTELLO: We have no --

5 THE COURT: You may step forward, Dr. Bard.
6 I'm sorry. I was just doing it while you were walking
7 up. I'm sorry.

8 MS. COSTELLO: We don't have a copy of it at
9 this time, Your Honor.

10 THE COURT: Okay.

11 MR. BREDENBERG: And, Your Honor, we were
12 unable to verify whether it actually existed.

13 THE COURT: Okay.

14 THE CLERK: Please raise your right hand and
15 state your name for the record.

16 THE WITNESS: Leonard Alan Bard.

17 (The witness was placed under oath.)

18 THE COURT: Dr. Bard, for the record, is
19 accepted as an expert.

20 MS. COSTELLO: Your Honor, before I begin,
21 the Court mentioned -- there was some confusion about
22 whether the audiotape is related to '06 or 2010. They
23 relate to the 2006 attempted rape case, not the 2010
24 incident regarding Christine Harvey --

25 THE COURT: Okay. We used six different

1 kinds of names and initials and everything else. I
2 thought it was the '06 incident that the audiotape
3 related to. I'll go back through and reread everything.

4 MS. COSTELLO: I just wanted to make sure it
5 was clear.

6 THE COURT: And the 2010 incident was the
7 incident that resulted in the broken arm. There's no
8 audiotape of those incidents. The 2006 is the
9 allegation of rape that was audiotaped. I've read the
10 letters that are in the defense submission sent by this
11 defendant to his sister and by the sister back. So I'm
12 familiar with --

13 MS. COSTELLO: Thank you.

14 THE COURT: That they clearly constitute
15 Brady, and there appears to have been some significant
16 problem in state court regarding their understanding of
17 what constitutes Brady at the time that case was being
18 prosecuted.

19 All right. Your witness.

20 MS. COSTELLO: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. COSTELLO:

23 Q. Good afternoon, Dr. Bard.

24 A. Good afternoon.

25 Q. Have you been qualified as an expert here in Adam

1 Walsh Act cases in the Eastern District of North
2 Carolina before?

3 A. Yes, I have.

4 Q. And are you on the court-appointed list as well?

5 A. I am.

6 Q. Have you also testified in state court -- I'm
7 gonna call them SVP cases?

8 A. I have.

9 Q. In what jurisdictions?

10 A. Massachusetts, New York, New Hampshire, Virginia.
11 Those are the state courts.

12 Q. And how long have you been doing sex offender
13 risk assessments?

14 A. Since 1986.

15 Q. I'm gonna ask you, in the binder in front of you,
16 turn to Respondent's Exhibit 4, which is the second 4.

17 A. Yes.

18 Q. What is that?

19 A. This is a copy of my CV, or my resume.

20 Q. Okay. And I'm gonna ask you, does it appear to
21 be accurate?

22 A. It does.

23 Q. I'm gonna ask you to turn to one exhibit forward
24 to Respondent's Exhibit 3. What were you asked to do in
25 this case?

1 A. I was asked to conduct a forensic psychological
2 evaluation of Mr. Kozohorsky and to answer the questions
3 in the Adam Walsh Act that have been referred to
4 earlier.

5 Q. And did you ultimately reach an opinion?

6 A. I did.

7 Q. And does the document labeled Respondent's
8 Exhibit 3, is that a report that reflects your opinion?

9 A. It does.

10 Q. What is that opinion?

11 A. My ultimate opinion is that Mr. Kozohorsky is not
12 now a sexually dangerous person.

13 Q. And so I want to walk through each of the, quote,
14 prongs. The respondent, we stipulated to the first
15 prong but I did want to ask you -- there's been a lot of
16 talk about five separate allegations. For purposes of
17 your evaluation, which allegations or which offenses did
18 you rely on to satisfy the first prong?

19 A. I rely on the three separate convictions for
20 sexual offenses; I believe 1987, 1989, and 2006.

21 Q. Okay. So I want to move directly into -- well,
22 let me ask you this: Why did you not make a finding as
23 to the other two allegations?

24 A. I tend to rely on the most reliable information I
25 can when I conduct any forensic psychological

1 evaluation. A conviction, to me, is a reliable
2 indication that the individual has either pled guilty or
3 has been found to have committed a sexual offense.

4 Allegations are allegations, and I don't credit
5 them unless the individual has acknowledged them.
6 Charges that do not result in convictions are a little
7 more problematic in general. But my training is that I
8 am supposed to rely on the most certain information, the
9 most conclusive information, whenever I do evaluations.

10 Q. Okay. So I want to move to the second prong,
11 whether Mr. Kozohorsky suffers from a serious mental
12 illness, abnormality, or disorder. In your opinion,
13 does he have a serious mental illness, abnormality, or
14 disorder?

15 A. No.

16 Q. Did you diagnose a paraphilic disorder?

17 A. I did not.

18 Q. You note on page 9 of your report that
19 Drs. Hastings and Graney diagnose other specified
20 paraphilic disorder (nonconsent). Can you sort of
21 summarize why you did not offer that diagnosis?

22 A. There are many reasons why I did not. I think
23 the first and foremost is that it is not a legitimate
24 and accepted diagnosis. It is not part of the
25 Diagnostic and Statistical Manual Version 5, or actually

1 any other one before that, that is accepted by
2 psychiatrists, psychologists, social workers,
3 psychiatric persons, and other mental health
4 professionals.

5 In fact, it was specifically rejected by the
6 DSM-5 in 2013, not only from the Manual itself but from
7 the appendix which lists conditions for further study.
8 It was totally rejected, period. And to say that this
9 is a legitimate diagnosis, when it is exactly the same
10 thing that was rejected by the APA, the American
11 Psychiatric Association, to me, raises a lot of
12 questions.

13 The other major issue, and I have many issues
14 with this, is that there are no criteria. You can't
15 diagnose something that doesn't have criteria. If I
16 think a patient comes to my office and is depressed, I'm
17 going to look in the Diagnostic Manual to see if they
18 meet the specific criteria for a diagnosis of a major
19 depressive disorder or a dysthymic disorder or a bipolar
20 disorder because all of those are in play.

21 We don't have that here. We have nothing. There
22 is not a single empirically validated indication of a
23 paraphilia that involves nonconsent, period.

24 Q. So I want to draw your attention to pages 9 and
25 10 of your report. You list out there, sort of, five

1 factors, and I want to walk you through them.

2 At the top of that page, you write -- it's the
3 second full sentence on page 9. You write: In my
4 opinion, such a diagnosis of other specified paraphilic
5 disorder (nonconsent) is both unreliable and
6 inappropriate both in general and specifically.

7 So I want to sort of walk you through these
8 factors. In the third paragraph on page 9 you begin by
9 stating that, quote, the other specified category in the
10 DSM-5 has less construct and discriminative validity
11 than diagnostic categories for other psychiatric
12 disorders. Can you explain what that means?

13 A. Well, as I indicated afterwards, this has to do
14 with the lack of any clear diagnostic indicators. There
15 are no criteria here. So when I talk about the absence
16 of reliability, reliability means that two independent
17 examiners looking at the same set of facts, same data,
18 should come to the same conclusions.

19 There's actually been some research that has been
20 done in the SVP world that has looked at this, quote,
21 diagnosis, and the reliability coefficient, which is
22 called kappa, for this was something in the .3 range, as
23 opposed to, for example, pedophilia, which is much more
24 easily diagnosed, which is in the .7 range.

25 Now, rather than bogging this down with numbers,

1 basically what that means is that people can't agree on
2 what this is. And if you can't agree on what this is,
3 then you can't diagnose it reliably because, again,
4 there are no specific criteria.

5 Going back to the depression example, if the
6 individual says they have symptoms of hopelessness and
7 helplessness and loss of interest in activities and
8 suicidal ideation, we know that those are -- those have
9 been associated with the diagnosis of depression.

10 We have no criteria that have been found to be
11 associated with the nonconsent diagnosis, the paraphilic
12 coercive disorder, whatever we want to call it. There
13 is still no criteria, which makes diagnosing it both
14 unreliable and invalid.

15 Q. So when you talk about validity in the last
16 sentence of that third paragraph, you note that the
17 diagnosis lacks the reliability and also the validity
18 that indicates that it is actually measuring a genuine
19 construct. Can you explain what that means?

20 A. Right. Because there's no criteria, why can't we
21 say that every rapist who commits multiple sexual
22 offenses has this paraphilia? Rape, by definition, is a
23 nonconsenting event. So anyone who commits this and who
24 is able to maintain an erection and ejaculate
25 automatically shows arousal to, quote, nonconsent.

1 Well, unfortunately, that's what rape is, and
2 unfortunately it's out there. And I simply have no idea
3 after 35 years of doing this what would differentiate
4 your, quote -- I apologize -- typical rapist or
5 nonparaphilic rapist from this paraphilic rapist.
6 There's no way of distinguishing it.

7 Q. So I want to move into the second of your -- the
8 problems you list with the diagnosis, and that's on the
9 last paragraph there on page 9. It says, "Second, given
10 the above problems with both reliability and validity,
11 the notion of a nonconsent paraphilia cannot be utilized
12 to differentiate among various sexual offenders." What
13 do you mean by that?

14 A. Well, as I said -- I think I already talked about
15 that before you asked me. This really has to do with
16 how do we know, how do we differentiate. I mean, how do
17 we know that all offenders are not paraphilic? Because
18 again, if you can commit a rape, then you are showing
19 arousal to what is clearly a nonconsenting act.

20 But to say that this represents a paraphilia,
21 which has never been found in the research and never
22 been found in the Diagnostic Manual, is really a reach
23 and really is not supported anywhere.

24 Q. And you go on in that paragraph to note that all
25 victims of sexual offenses are nonconsenting by

1 definition. Is that an important point to your
2 analysis?

3 A. Exactly. As I indicated, rape is a nonconsensual
4 act, and the victims are not consenting. If the victims
5 consent, then it isn't rape. So I don't want to keep
6 saying the same things but, you know, this is what
7 rapists do.

8 Q. Are you aware of any empirically validated way to
9 determine if a person is specifically aroused to
10 nonconsent?

11 A. The only way that I am aware of is via statements
12 that the individual has made toward that or behaviors
13 that would clearly be indicative of that. The problem
14 is, again, just because someone commits rapes, that
15 doesn't mean that they did it for a paraphilic reason.
16 We know that individuals rape for a variety of different
17 reasons.

18 And, in fact, if I can talk about this for a
19 little bit now, we were actually involved at the
20 Massachusetts Treatment Center many years ago in
21 research that looked at subtypes of sexual offending.
22 We were trying -- this was very early on, there was not
23 much research that was done at the time -- trying to
24 understand why offenders offended. And we came up with
25 various subtypes, and other groups have also looked at

1 subtyping.

2 In all the research that I'm aware of on
3 subtyping that looked at issues like control and power
4 and anger and sadism, there's never been a specific
5 subtype postulated that is nonconsent.

6 Q. And when you say "subtypes," you mean subtypes of
7 rapists?

8 A. Subtypes of rapists; basically trying to
9 understand why offenders offend. And again, some do it
10 because they seek control or seek power or displacing
11 anger. Some are impulsive and opportunistic, but
12 there's never been a subtype that's been proposed that
13 is, quote, nonconsent. And I think that's because
14 they're all nonconsent, because rape is nonconsent.

15 THE COURT: I'm gonna interject a question
16 here because I think it fits here.

17 There are translation problems between the
18 legal discourse and the psychological discourse. But is
19 this problematic because it proves too much? That is,
20 anybody who is a serial rapist has something wrong with
21 them. That is, they engage in serial rape. Right?
22 There is a problem with somebody who's going to engage
23 in serial rape, and whatever the subtype is doesn't
24 matter legally. If that person is dangerous because
25 they have a mental defect, that gives them a propensity

1 to repeatedly engage in rape.

2 So my question is, while the paraphilia --
3 that is, I am specifically aroused by the act of
4 nonconsent -- might be a subdivision, isn't serial rape
5 itself, while not clinical, sufficiently a problem that
6 we might look at it as a mental disease or defect?

7 THE WITNESS: It is an enormous problem and
8 it is a criminal act, but no, sir, it is not a
9 paraphilia. It's never been identified as a paraphilia.

10 THE COURT: I understand that, and that's
11 within the psychological discourse, and they're not the
12 same thing. I think the two disciplines are orthogonal;
13 they touch at points but they're not trying to solve the
14 same problem.

15 Thank you. I understand your answer, and
16 I'll move on. I'll allow you to move on.

17 BY MS. COSTELLO:

18 Q. So on page 10 you talk about the fact that
19 there's very little support in the scholarly literature
20 for the existence of a paraphilia that postulates sexual
21 arousal to the nonconsent of victims in a sexual
22 assault, and you mentioned two articles in that
23 paragraph. Can you explain, sort of, what this
24 scholarly literature says about sexual arousal to
25 nonconsenting victims?

1 A. What the research has shown is that there really
2 is no empirical research that supports the finding that
3 there is a subtype of offenders that are specifically
4 aroused to nonconsent. As I indicated earlier, rape is
5 a nonconsenting offense and -- but we have never been
6 able to find individuals who are specifically aroused to
7 that. The research that Dr. Hastings talked about, the
8 PPG research, one, it's 20 years old and it hasn't been
9 replicated, and it did find arousal to, basically, rape
10 scenes. But arousal to rape scenes is found in normal
11 men and women. That by itself does not tell us anything
12 about a specific group of offenders who are more aroused
13 to nonconsent or less aroused to nonconsent. You know,
14 again, we come to the same problem. How do you
15 differentiate a nonparaphilic rapist from a paraphilic
16 rapist? Because rape is unfortunately very frequent, I
17 mean, and clearly, based on laws like this, the number
18 of rapists with mental diseases, defects, disorders, is
19 very low.

20 So how do we find those individuals? And I know
21 we've talked about those signs that Dr. Doren have, you
22 know, postulated. But here again, that's speculation on
23 his part in a book that was not peer-reviewed in 2002.
24 And there simply has been no further research that has
25 been done. As Your Honor said, you could come up with

1 similar things today. I could. I could sit here and
2 name four other things that might be related, and
3 they're just as useless as the other nine because I
4 could -- because I have experience in this field but I
5 don't have the ability to say positively that this is
6 what is related here. It takes time, it takes research,
7 it takes effort to ground a theory, let's call it, in
8 research, in research findings.

9 Q. So have you read that book by Dr. Dennis Doren?

10 A. Yes.

11 Q. And are you familiar with the factors that were
12 testified to by Drs. Graney and Hastings that can be
13 considered when determining whether a person is
14 specifically attracted to nonconsent?

15 A. Yes.

16 Q. Are you aware of whether Mr. Doren cites any
17 research or studies in support of each of those nine
18 factors?

19 A. As far as I can recall, Dr. Doren does not cite
20 any empirical research. This is his way -- and he's
21 fairly open about it -- he is making up a disorder to
22 account for the fact that there's no paraphilic rape
23 disorder in the Diagnostic Manual. He was very upfront
24 about that.

25 Q. Are you aware of whether any research has been

1 done on those criteria since the publication of that
2 book?

3 A. I am not aware of any research that has been done
4 to validate any of those nine factors in terms of trying
5 to predict a or to identify a paraphilic rape diagnosis.

6 Q. And so I'm gonna ask you specifically about each
7 factor. Are you aware of any research that demonstrates
8 a link between signs of sexual arousal during a rape,
9 such as ejaculation and attraction to nonconsent?

10 A. No.

11 Q. Do you think that signs of sexual arousal during
12 a rape, like ejaculation, provides evidence of a
13 specific attraction to nonconsent?

14 A. Virtually every rapist I've ever evaluated has
15 shown signs of sexual arousal during the commission of
16 that rape. Therefore, it becomes a meaningless factor
17 because if everybody has it, it doesn't discriminate.

18 Q. Are you aware of any research that demonstrates
19 that a repetitive action across rapes is evidence of an
20 attraction to nonconsent?

21 A. No.

22 Q. Do you think that repetitive patterns of action
23 across rapes are compelling evidence of an attraction to
24 nonconsent?

25 A. The only research that has been done, or the only

1 findings that have to do with that, have to do with
2 sexual sadism. Sexual sadists tend to create scripts or
3 certain scenarios that they continually act out; might
4 be abducting a victim into a certain place or having
5 them wear certain clothing. Those are the kinds of
6 repetitive scripts that we've seen in this field. But
7 in terms of nonconsent, no.

8 Q. Dr. Hastings talked about, sort of, the agnostic
9 continuum between a nonconsent paraphilia and sexual
10 sadism. Do you recall that?

11 A. Yes.

12 Q. And he testified that that idea came from Ray
13 Knight, right?

14 A. Yes.

15 Q. Are you familiar with Ray Knight?

16 A. Yes. I know him well.

17 Q. How?

18 A. He was my advisor in college. I did my senior
19 honors thesis with him. I have published with him.

20 Q. And can you sort of explain whether that -- how
21 that idea of an agnostic continuum fits or doesn't fit
22 with this case?

23 A. Well, Dr. Knight has done incredible research in
24 this field, but he will be the first to tell you, as he
25 has told me and other courts, that a paraphilia with

1 nonconsent does not exist. He testified in a hearing in
2 -- actually, in two hearings in -- I'm sorry -- in New
3 York, arguing against the general acceptance of OSPD
4 nonconsent. I was involved in both of those cases. We
5 both testified. And in both cases the Courts found that
6 nonconsent was not -- it did not reach a level of
7 general acceptance and would not allow it in.

8 So Ray Knight has been very clear all along about
9 the problems with any nonconsent diagnosis.

10 Q. So you just sort of testified to this. Is there
11 controversy over the diagnosis within the specific field
12 of sex offender risk assessment?

13 A. Yes and no. Yes, because clearly here my
14 colleagues have opined that this is a legitimate
15 diagnosis; no, because it's been rejected already ten
16 years ago by APA, American Psychiatric Association. It
17 has been rejected in various jurisdictions as not
18 reaching a level of general acceptance.

19 Q. You might have just mentioned this, but is the
20 diagnosis accepted in other jurisdictions in which you
21 practice? You talk about this in your report as well.

22 A. The two jurisdictions in which I practice the
23 most, New York and Massachusetts, in New York it is not
24 accepted. It is not allowed in. In Massachusetts it
25 is -- I can't remember the last time anyone actually

1 diagnosed that. I don't think it's ever been
2 specifically excluded, but I think that's because nobody
3 uses it.

4 Q. So moving back to the Doren factors, are you
5 aware of whether there's any research that indicates
6 that a person's criminal history being virtually all
7 sexual in nature is evidence of an attraction to
8 nonconsent?

9 A. No.

10 Q. Do you think that a person's criminal history
11 being all sexual in nature demonstrates that the person
12 or provides evidence that the person is attracted to
13 nonconsensual sex?

14 A. No.

15 Q. Why not?

16 A. Because again, someone's criminal history could
17 involve a number of different sexual types of offending.
18 So if someone commits numerous exhibitionistic offenses,
19 that certainly doesn't mean that they're attracted to
20 nonconsent. Someone offends against a child, an adult,
21 that doesn't mean that they're attracted to nonconsent.

22 Again, what we know is that people offend for
23 different reasons, and you can't generalize all those
24 things and lump them into this one nonconsent category.

25 Q. Are you aware of any research that demonstrates

1 that an individual raping when the victim was willing to
2 have consensual sex is evidence of an attraction to
3 nonconsent?

4 A. No.

5 Q. Do you think that that scenario, that a person
6 raping when the victim was willing to have consensual
7 sex, provides evidence of a person being attracted to
8 nonconsent?

9 A. I think out of all of the factors, that's the one
10 that makes the most sense. But unfortunately, just
11 because something may make sense doesn't mean it's
12 valid. When I was learning this field in the '80s, we
13 were being taught that denial is a risk factor because
14 it made sense. If you deny your offenses, if you
15 minimize your offenses, you have to be at higher risk.
16 It made sense. Turns out the research has shown "not
17 true." The correlation is pretty much zero, which means
18 it's not for or against. So while this might make
19 sense, until there's research that says if someone does
20 that, that means they have an attraction to nonconsent,
21 I would just say I don't know.

22 Q. Are you aware of any research that demonstrates
23 that a short time period after consequences before
24 raping again is evidence of an attraction to nonconsent?

25 A. No.

1 Q. Are you aware of any definition that's provided
2 of "a short time period"?

3 A. No.

4 Q. Do you believe that a short time period after
5 consequences before raping again demonstrates that a
6 person is attracted to nonconsent?

7 A. No, not at all.

8 Q. Why not?

9 A. Because again, and I apologize for repeating
10 myself, people rape for different reasons. You could
11 have someone -- and I have had someone who is so angry
12 at everybody that he has repeatedly raped even after
13 being incarcerated, he gets out and he rapes again, and
14 it's clearly a function of anger because the rapes would
15 be precipitated by arguments with family members. So
16 even though he raped repetitively, it had nothing to do
17 with nonconsent. And this individual, for example,
18 could not maintain an erection because it was not a
19 sexual -- the sexual drive was not what was driving his
20 offense. It was the anger.

21 So again, we try not to generalize about these
22 things because there's such a heterogeneity in this
23 field.

24 Q. Are you aware of any research that demonstrates
25 that an individual raping under circumstances with a

1 high likelihood for being caught is evidence of an
2 attraction to nonconsent?

3 A. No.

4 Q. Are you aware of any definition or criteria for
5 determining what is a high likelihood or what is a
6 circumstance with a high likelihood of being caught?

7 A. No.

8 Q. And do you believe that raping someone under
9 circumstances with a high likelihood for being caught
10 provides compelling evidence that a person is
11 specifically attracted to nonconsensual sex?

12 A. No.

13 Q. Are you aware of any research that demonstrates
14 that an individual raping when he had a concomitant
15 cooperative sexual partner is evidence of an attraction
16 to nonconsent?

17 A. No.

18 Q. Do you believe that it provides specific evidence
19 that a person is attracted to nonconsent?

20 A. No.

21 Q. Why not?

22 A. Because here, again, people rape for different
23 reasons. You try to understand what drove a particular
24 offender at a particular time. It may have been anger,
25 it may have been control, that the person had a sexual

1 partner and he was being mocked or made fun of, that
2 might fuel anger. It could be lots of different
3 reasons. And again, it does nothing specifically to do
4 with the issue of nonconsent, and even more to a
5 paraphilia involving that.

6 Q. Are you aware of research indicating that an
7 individual having various victims is evidence of an
8 attraction to nonconsent?

9 A. No, absolutely not.

10 Q. Do you know what is meant by "various victims"?

11 A. I don't. I think Doren talked about having child
12 victims and teen victims and adult victims; but even so,
13 that doesn't tell us anything about the individual.

14 Q. There was some testimony about Mr. Kozohorsky
15 having victims of various ages. Do you recall how old
16 he was when he had teenage victims?

17 A. He was 22.

18 Q. Is that relevant to you at all in determining
19 whether he had -- I mean, what the significance, if any,
20 of teenage victims is?

21 A. It would seem to be more of a peer-aged thing
22 than targeting teens. If he was truly targeting teens,
23 then you would expect all of his offenses would involve
24 teenagers.

25 Q. Just one last question about these. Are you

1 aware of any reliable way that exists for an evaluator
2 to measure these nine factors?

3 A. No.

4 Q. So we've sort of talked about why it's generally
5 inappropriate. I want to talk briefly about your
6 conclusion that the diagnosis is not specifically
7 appropriate for Mr. Kozohorsky. Can you explain why you
8 don't think -- do you believe that there's evidence that
9 Mr. Kozohorsky is specifically attracted to
10 nonconsensual sex?

11 A. No.

12 Q. Can you explain that?

13 A. Here again, I think it stems from my opinion that
14 such a paraphilia doesn't really exist. Mr. Kozohorsky
15 has given various explanations and versions of events
16 that are not consistent with those of his victims in
17 each of the offenses. Even though he accepts
18 responsibility for the sexual assault of his first
19 victim, his version of events is not the same in terms
20 of their prior relationships and things like that.

21 It just does not -- the idea that what drove him
22 was some specific arousal to nonconsent really doesn't
23 make a lot of sense. We obviously don't know exactly
24 what happened in each of the offenses. There are some
25 that are particularly problematic in terms of the

1 sentence that he received for the incredibly serious
2 charges. I don't know, obviously, and I will not claim
3 to know. But even if I accept the victim's version in
4 every one of those convictions, and even if I accept the
5 allegations that have been made earlier, it does not hit
6 me as this is a pattern of offending that's driven by
7 anything but an antisocial "I want to do what I want
8 when I want it" kind of thing.

9 What we know about sexual offenders is that they
10 come to be sexual offenders in one of two different
11 ways. One is from the sexual deviancy range, and one is
12 the antisocial hostile range. And looking at his
13 behavior, he definitely would fall much more on the
14 antisocial hostility toward women kind of thing. It's
15 not that Mr. Kozohorsky should get credit for not having
16 a paraphilia. He certainly did horrendous things. But
17 it doesn't seem to me that there's any indication that
18 whatever we want to call it, paraphilic coercive
19 disorder or arousal to nonconsent, was involved here.

20 Q. You testified earlier about statements of
21 arousal to nonconsent. Do you see that anywhere in
22 Mr. Kozohorsky --

23 A. I'm sorry, I couldn't hear.

24 Q. You testified earlier about statements indicating
25 arousal to nonconsent. Do you see that anywhere in

1 Mr. Kozohorsky's -- in the record, that he --

2 A. No, I don't.

3 Q. And when looking at whether an attraction to
4 nonconsensual sex is present, did you consider at all
5 the number of consenting victims that he has had over
6 the years?

7 A. Well, if you are going to opine that a nonconsent
8 paraphilia exists, one of the things in the Diagnostic
9 Manual, it says that the paraphilia needs to be intense
10 or recurrent. And when you don't have evidence to show
11 that, it should be considered to be the primary means --
12 I'm blanking on the word, I apologize -- oh, the
13 preferential way of the individual obtaining
14 gratification.

15 If we believe Mr. Kozohorsky engaged in multiple
16 consenting sexual partners in his lifetime, multiple
17 prostitutes whom he paid, then he clearly has many more
18 instances of consenting sexual activity than illegal
19 predatory behavior.

20 I don't think that's the be-all and the end-all,
21 but I think that's an important thing. If someone was
22 only committing offenses and did not have any consenting
23 sexual outlets, you might have an argument that this is
24 the only way that this person can get some sort of
25 sexual or emotional gratification. When you see sexual

1 sadists who tend to repeat the sadistic action because
2 that's the specific arousal to violence that they enjoy,
3 you can make some assumptions based on this. But for
4 someone like Mr. Kozohorsky who, for the past three,
5 four years in the community, by his account, used
6 prostitutes almost exclusively, which by definition is a
7 consenting sexual encounter, would certainly argue
8 against any preferential arousal to nonconsent.

9 Q. We've talked a lot about nonconsent. I want to
10 talk about the other two diagnoses that you mention in
11 your report. One is an other specified personality
12 disorder with antisocial features. Did you offer this
13 diagnosis?

14 A. I did not.

15 Q. Why not?

16 A. I did not for two reasons. First, I clearly
17 believe that Mr. Kozohorsky's past actions, both sexual
18 and nonsexual, are mediated primarily by his antisocial
19 patterns of behavior. He clearly violated the rules,
20 didn't care about the harm he was causing. I think
21 that's obvious.

22 I didn't diagnose it at the present time because
23 the diagnosis of a personality disorder, as was
24 indicated earlier, has to be an ongoing current pattern.
25 You can't say that Mr. Kozohorsky committed all these

1 offenses and was clearly antisocial but hasn't shown a
2 pattern of antisocial behavior for the past 12, 12 to 15
3 years. That is consistent with the findings of the
4 Diagnostic Manual that say for antisocial people, their
5 symptoms and their behaviors tend to burn out after the
6 age of 40. It's not coincidental, I think, in this case
7 that Mr. Kozohorsky's last conviction for a sexual
8 offense occurred when he was 41. And in the 17 years
9 since, he has not been convicted of a sexual offense.
10 Obviously he's not been in the community for a majority
11 of that, but antisocial people still find ways to act
12 antisocially whether they're incarcerated or not. I've
13 seen numerous individuals over my years of doing this
14 who find ways to manipulate the system and manipulate
15 lower-functioning individuals in prisons or try to
16 create false tax returns or have money sent in or sent
17 out. There are lots of ways.

18 Mr. Kozohorsky hasn't done any of those. He has
19 no tickets for the last 12 years. And moreover, his
20 current age of 58 argues against that kind of pattern
21 going forward. Antisocial people tend to burn out, and
22 Mr. Kozohorsky seems to be someone who was certainly
23 that way in the past but is not at the present time; so
24 therefore, I didn't offer that diagnosis because all
25 diagnoses have to reflect current patterns.

1 Q. And so on page 11 of your report, you write
2 "Personality disorders are considered to be inflexible
3 and pervasive across a broad range of personal and
4 social situations. So one would expect to see that same
5 pattern of antisocial behavior in different situation
6 and environments, including in the community, while
7 incarcerated, at work, and in relationships with
8 others." Do we see that here?

9 A. No. I think we've seen that in the past, but we
10 don't have it now. In the past, his relationships were
11 clearly problematic. His criminal behavior was both
12 sexual and nonsexual. His employment was probably the
13 only solid thing in his life. But there was certainly
14 problems in the past. But you know, here again, we
15 can't just say because he had it in the past, that means
16 that he has it now.

17 Q. Did you offer any diagnosis in Mr. Kozohorsky's
18 case?

19 A. I did. I diagnosed him with an alcohol use
20 disorder.

21 Q. Why don't you believe that this disorder
22 qualifies as a serious mental illness, abnormality, or
23 disorder under the purposes of the Adam Walsh Act?

24 A. Because alcohol abuse by itself does not
25 predispose anyone to the commission of sexual offenses.

1 It can certainly serve as a disinhibiting factor, and in
2 combination with other disorders can certainly be more
3 of a problem. But by itself, alcohol abuse does not, in
4 my opinion, conform to what this law talks about, a
5 mental illness, disorder, or abnormality.

6 Q. I want to move on to the third prong, the serious
7 difficulty prong. So let's assume for purposes of these
8 questions that the Court finds that prong 2, the serious
9 mental illness, abnormality, or disorder is met. What
10 is your opinion on whether Mr. Kozohorsky would have
11 serious difficulty refraining from future acts of sexual
12 violence?

13 A. My opinion is that he would not.

14 Q. So before we get into the specifics of your
15 opinion, is there something unique about the federal law
16 in terms of the third prong when you compare it to the
17 state laws in the jurisdictions in which you often work?

18 A. Yes.

19 Q. What is that?

20 A. The federal court talks about an offender who
21 would have, quote, serious difficulty in refraining from
22 sexually violent conduct or child molestation. The
23 states where I have been doing these evaluations don't
24 -- also talk about serious difficulty but in terms of
25 the mental abnormality piece. In the risk piece they

1 talk about a likelihood of someone committing a sexual
2 offense.

3 The reason that that's important is because many
4 of the actuarial tools that others have talked about
5 have to do with a risk prediction, not whether or not
6 someone can show an ability or a serious difficulty in
7 managing their behavior. They talk about the risk of
8 committing a sexual offense or the likelihood.

9 Q. I notice that you did score the Static-99.

10 A. I did.

11 Q. What score did you attribute to Mr. Kozohorsky?

12 A. A 4.

13 Q. And what are the estimated recidivism rates of
14 people who are similarly situated to him?

15 A. A score of 4 places Mr. Kozohorsky in a group
16 that recidivated at a rate of 9.2 percent over five
17 years. That is not his risk. We don't know his risk,
18 obviously. All the actuarials can ever tell us is what
19 group he falls into and the recidivism rate of that
20 group. What the 9.2 percent means is that if you follow
21 100 individuals who score a 4 and you follow them for
22 five years, after five years approximately nine of the
23 100 will either be charged or convicted of a sexual
24 offense and 91 of those 100 will not.

25 If we knew which group he would fall into, this

1 would be easy, but we don't and we can't. So all we can
2 say is that he falls in a group that recidivated at a
3 certain rate, period. That is all it can ever tell us.

4 Q. And what will happen to those recidivism rates as
5 Mr. Kozohorsky ages? What generally happens to
6 recidivism rates as a person ages?

7 A. Age has been found to be negatively correlated
8 with risk. So as individuals get older, their risk to
9 recidivating goes down.

10 Q. Is there sort of an age at which it's widely
11 considered to be -- is there support for the idea that
12 there's a certain age at which recidivism rates, sort
13 of, are extremely low?

14 A. Yes. For individuals who are released after the
15 age of 60, the recidivism rate goes down significantly.
16 The base rate in the research for individuals who have
17 been released after the age of 60 is approximately 2
18 percent.

19 Q. And, I mean, obviously people are sometimes
20 released, sort of, not at a magical age, right?

21 A. Right.

22 Q. Does the literature indicate that risk sort of
23 generally goes down over time?

24 A. It does. There's actually research that has
25 shown that there's a 2 to 5 percent decrease per year

1 over time. And again, after 60 it tends to drop off
2 more substantially, particularly for adult rapists as
3 opposed to pedophiles.

4 Q. On page 13 of your report, you talk about
5 Mr. Kozohorsky's ability to manage his sexual impulses
6 living in -- either while incarcerated over the past 12
7 years or in the three years in the community prior to
8 his federal conviction. Is it important to you that
9 there are no allegations of sexual misconduct while he's
10 been in custody?

11 A. Yes.

12 Q. Why?

13 A. Because if there were allegations, or even more
14 than that, convictions or proven episodes of sexual
15 misconduct, then that would indicate to me that
16 Mr. Kozohorsky continues to have significant problems
17 managing his sexual urges or impulses, even in a
18 confined setting.

19 So not having those and not having any tickets
20 for any misconduct, sexual, violent, or otherwise, is
21 certainly a positive prognostic sign.

22 Q. What evidence, if any, do you see of the presence
23 of continued deviant thoughts or present deviant
24 thoughts?

25 A. I don't see any evidence of that. The problem is

1 we -- other than basing it on his behavior or on things
2 he has said -- we really cannot read minds. So all we
3 can do is look at his behavior. And his behavior while
4 incarcerated certainly indicates that he does not -- has
5 not engaged in any deviant conduct. And for the years
6 before he was incarcerated after his -- the 2006
7 suspended sentence or probation, he certainly also --
8 there were no indications of any convictions or even
9 charges. I know there was an allegation, but again,
10 that is as -- it's tough to put much credence there.

11 Q. So I did want to ask you about that. In that
12 paragraph you talk about him not demonstrating any
13 difficulties managing his sexual impulses in the three
14 years prior to his failure to register conviction. Did
15 you consider that 2010 allegation of sexual assault?

16 A. I saw it, but did I consider it as a meaningful
17 thing? No.

18 Q. Does it change your opinion at all?

19 A. No.

20 Q. Why did you not rely on it?

21 A. Because there's never been a charge, there's
22 never been a conviction. Just having an allegation
23 doesn't give me enough information to take this into
24 account in any way. The fact that he was investigated
25 for other things and not that again argues against it as

1 being a meaningful factor. I can't say it did not occur
2 because I simply don't know. But there's no evidence
3 that it did occur, and there was no indication that he
4 was ever charged.

5 Q. On pages 13 and 14 of your report, you discussed
6 dynamic risk factors. What is a dynamic risk factor?

7 A. Risk factors can be divided into two different
8 things. Static risk factors, things that do not change,
9 those are usually incorporated into the actuarial. So
10 whether or not Mr. Kozohorsky had an unrelated victim,
11 which he did, or a male victim, which he did not, that
12 is a static risk factor. That will not change.

13 A dynamic risk factor is a factor that was
14 involved in his offending that contributed to his
15 offending in some way that can change over time. And I
16 think that's a crucial thing to look at. But you have
17 to look at it both in terms of what he did then and
18 where he is now; because that's the whole key to a
19 dynamic risk is that it changes over time.

20 Q. And were you present in the courtroom for the
21 testimony of Dr. Hastings and Dr. Graney?

22 A. Yes.

23 Q. Did you hear them discuss dynamic risk factors?

24 A. I did.

25 Q. Do you agree or disagree with their analysis of

1 the dynamic risk factors?

2 A. I agree that some of those dynamic risk factors
3 were important in the past. But the problem is, from
4 what I heard, they were focused only on the past of
5 those factors and not where he is now.

6 So when someone says resistance to rules or poor
7 cooperation with supervision, he certainly showed that
8 in the past. He was an antisocial guy, rules didn't
9 matter to him, he did what he wanted to. But where is
10 he now? And what we have, and albeit it's not the same
11 as being in the community, we have 12 years of behavior
12 where he's been monitored virtually all the time and he
13 has gotten zero tickets. So he's certainly able to
14 cooperate with supervision, with officers, with staff.
15 He has not acted out. It's very easy to get a ticket in
16 federal prison, in state prison. You can do it by
17 talking back to officers, by not standing for count, by
18 a variety of things. And the fact that Mr. Kozohorsky
19 has been able to manage those impulses and those
20 behaviors says that he indeed has made significant
21 changes over time.

22 Q. You also note that he has not endorsed any
23 cognitive distortions relating to his offending
24 behavior. You were present in court today for his
25 testimony, right?

1 A. Yes.

2 Q. And do you consider his denial of the offenses,
3 other than the 1987 rape of Rhonda Horner, to be a
4 cognitive distortion?

5 A. I don't consider denial to be a cognitive
6 distortion. He is simply saying the offense did not
7 occur as it was charged.

8 Q. Other experts note that Mr. Kozohorsky seems to
9 engage in grievance thinking or victim blaming. Do you
10 agree that those are cognitive distortions?

11 A. I think if he blames his victims, then yes, that
12 is a cognitive distortion. Grievance thinking is a
13 vague, not well-defined term that again came from that
14 same meta-analysis that was talked about earlier. But
15 it's never been validated. It does not have a high
16 correlation with risk. In fact, most of the things in
17 the Mann and Hanson meta-analysis do not correlate
18 highly, so I have a problem with that.

19 Q. So let's say that his grievance thinking and
20 victim blaming are cognitive distortions. Would the
21 presence of that change your ultimate opinion?

22 A. No.

23 Q. You mentioned the 2010 meta-analysis done by Mann
24 and Hanson.

25 A. Yes.

1 Q. What did that study find? What was, sort of, the
2 ultimate takeaway from it?

3 A. It sought to identify dynamic risk factors in the
4 literature that could be predictive of sex offender
5 recidivism. The authors caution in that article that
6 this is preliminary and it's subject to further
7 validation. Unfortunately, they have not published
8 anything after that. It's been 13 years. So what we
9 are left with is a set of factors that may be valid, may
10 not be valid, but no one really knows because there
11 hasn't been any follow-up.

12 Q. There was a lot of testimony about a letter
13 mailed in 1995. It's at Government's Exhibit 22.

14 A. Yes.

15 Q. Do you know the letter I'm talking about?

16 A. I do.

17 Q. Does that change your opinion or play a role in
18 your opinion at all?

19 A. I received that letter after I wrote my report.
20 I had a hard time actually reading it. It's not very
21 clear. But no, I certainly don't think it affects my
22 opinion as to whether or not he has a nonconsent
23 paraphilia. As was noted earlier, a lot of the things
24 in there, while they are graphic and horrible, do not
25 indicate that he was aroused to that. A lot of the

1 things that he wrote, as was said earlier, was his
2 belief that his partner was enjoying that. Maybe they
3 were, maybe they weren't. Maybe it was all in his head.
4 I don't know. But again, that doesn't show anything in
5 terms of a nonconsent paraphilia.

6 Q. Do you view Mr. Kozohorsky's lifetime
7 registration as a helpful factor in terms of his
8 volitional control?

9 A. Yes.

10 Q. Why?

11 A. Because there is research that shows for sex
12 offenders in specific and for offenders in general, that
13 the presence of supervised probation, supervised
14 release, reduces risk. It allows for an external set of
15 controls over individuals who may have some difficulty
16 there and allows them to transition more easily into the
17 community. In my experience, the transition is often
18 more problematic than it seems, and the more structure
19 that an offender has when they leave incarceration, the
20 better it is.

21 Q. Does the fact that he was on probation for the
22 2006 offense at the time of his 2010 arrest change your
23 mind about the helpfulness of the lifetime supervision?

24 A. If he had committed a sexual offense, yes, it
25 would change my mind. But no. The failure to register

1 is a federal offense, but it's not the kind of offense
2 that gets you to a place like this by itself.

3 Q. When you were assessing the case, you testified
4 earlier that you assumed or you believed that he
5 committed the offenses to which he pleaded guilty,
6 right?

7 A. It's not that I believe it. My beliefs are
8 irrelevant here. This is not what I think. I base my
9 evaluation on as many factual details as I can.
10 Mr. Kozohorsky was convicted of those offenses.
11 Therefore, when I do my evaluation, it is based on the
12 assumption, I guess, that he offended at those times.

13 Q. He has obviously denied many of the offenses, and
14 so I wanted to ask, you know, how the 2006 offense
15 specifically played into your analysis. Is there
16 anything that you saw in the materials that you reviewed
17 that made you question what happened in that case?

18 A. It's a complicated issue. Yes, obviously. The
19 things I read and the things I saw did make me question
20 what actually happened. And ultimately I have no idea
21 what actually happened. But the fact that he was
22 charged with four counts of rape and walked out of court
23 that day is unusual. Highly improbable, let's just say,
24 in my experience.

25 So it does raise questions, but it's a conviction

1 for a sexual offense. I'm not discounting that. I am
2 considering it as a sexual offense.

3 Q. Did you, when you were analyzing the case, come
4 to a determination as to whether you believed that there
5 were tapes that corroborated Mr. Kozohorsky's account of
6 that offense?

7 A. Based on everything I read, not only what
8 Mr. Kozohorsky told me, yes, it seems that there were
9 tapes. What is on those tapes, I don't know.

10 MS. COSTELLO: Nothing further, Your Honor.

11 THE COURT: All right. We're gonna take a
12 ten-minute afternoon recess for comfort, and we will
13 return at five minutes till for cross-examination.

14 (Proceedings recessed at 3:43 p.m.)

15 (Proceedings recommenced at 3:57 p.m.)

16 THE COURT: All right. Back on the record.
17 Cross-examination by the United States.

18 MR. BREDENBERG: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BREDENBERG:

21 Q. Good afternoon, Dr. Bard.

22 A. Good afternoon.

23 Q. You testified on direct that there's a
24 difference, in your opinion, between federal and state
25 laws regarding sexually violent predators, correct?

1 A. Correct.

2 Q. And have you ever found someone to be sexually
3 dangerous in federal court?

4 A. Yes.

5 Q. How many people?

6 A. I've only done about 15 to 20 of these. My best
7 estimate is three or four.

8 Q. Okay. Now, the 15 to 20, that has not occurred
9 in the past few years, has it?

10 A. No. I haven't done -- I've been retained on one
11 case in the past four years before this one.

12 Q. Now, with regard to Mr. Kozohorsky, you do accept
13 that he has engaged in sexually violent conduct in the
14 past, correct?

15 A. Yes.

16 Q. And on your direct testimony, that was based on
17 three people?

18 A. Yes.

19 Q. Did you consider the Sandra, which was connected
20 or done around the same time as the Rhonda back in 1987?

21 A. In terms of whether he met the first prong? He
22 already had three others, so I did not really concern
23 myself in terms of whether or not that met the criteria
24 because it was already met.

25 Q. Would one have been enough for you for whether it

1 met prong 1?

2 A. Yes.

3 Q. If there was a -- if you were to agree with the
4 diagnosis, which we can get to in a minute, would it
5 matter how many victims he had?

6 A. In terms of the third prong, yes.

7 Q. Okay. And do you have a particular number?

8 A. No.

9 Q. Okay. Did you consider anyone other than those
10 three for prong 3?

11 A. I'm sorry?

12 Q. Sorry. Did you consider any more than Rhonda,
13 Nadine, and Linda when you considered prong 3?

14 A. No.

15 Q. Okay. All right. Let's talk about prong 2,
16 which is the diagnosis that you testified for a while on
17 direct. You don't agree that Mr. Kozohorsky has a
18 serious mental illness, abnormality, or disorder,
19 correct?

20 A. I do not.

21 Q. And that's because you don't believe that the
22 diagnosis of paraphilia not otherwise specified or other
23 specified paraphilia, not otherwise specified, is not a
24 legitimate diagnosis, right?

25 A. Correct.

1 Q. Okay. And you don't believe that that diagnosis
2 would be applicable in any Adam Walsh or sexually
3 violent predator case, correct?

4 A. I do not believe that that is a legitimate
5 diagnosis in any case. Right.

6 Q. And you've called it a hypothesized diagnosis,
7 correct?

8 A. I've called it a lot of things, yes.

9 Q. But in this case you -- one of the things you
10 called it was hypothesized, right?

11 A. Yes.

12 Q. Okay. And one of the reasons that you disagree
13 with it is because you say that it's not listed in the
14 DSM-5, correct?

15 A. It's not listed because it was specifically
16 rejected, yes.

17 Q. Okay. But you're saying, just so we're clear,
18 you're saying that you don't use it because it's not
19 specifically listed in the DSM-5, right?

20 A. I'm gonna repeat myself -- because that specific
21 diagnosis was rejected from inclusion, yes.

22 Q. Okay. And I'm repeating myself because I'm
23 asking you a slightly different question. You don't
24 believe that that diagnosis is in the DSM-5, correct?

25 A. Correct.

1 Q. Okay. And you testified on direct that one of
2 your other concerns is that it doesn't have any
3 criteria, correct?

4 A. Correct.

5 Q. Okay. But actually there is criteria for other
6 specified paraphilic disorder, isn't there?

7 A. No.

8 Q. Listen to the question. There is criteria for
9 the diagnosis of other specified paraphilic disorder,
10 correct?

11 A. No.

12 Q. Okay. Do you utilize the DSM-5?

13 A. I do.

14 Q. Okay. So are you familiar with it?

15 A. I believe I am.

16 Q. All right. And I don't know how to do this
17 exactly without -- I mean, if you're familiar with it,
18 do you recognize a diagnosis in the paraphilia section
19 called other specified paraphilic disorder?

20 A. I do recognize that it is in there, yes.

21 Q. Okay. And specifically, it's on page 705 and it
22 specifically has one of the numbers that they give it,
23 302.89.

24 A. Okay.

25 Q. Okay. So are you agreeing that there's a

1 diagnosis of other specified paraphilic disorder in the
2 DSM-5, or you still say there isn't?

3 A. It is in there. You were asking me about
4 criteria, I believe.

5 Q. Okay.

6 A. So if I misheard that, I apologize.

7 Q. I apologize if I said that.

8 A. But yes, that diagnosis, other specified
9 paraphilic disorder, is in the DSM. Yes.

10 Q. Okay. And do you know what that is? The one
11 that is in here?

12 A. I don't know what you're asking me.

13 Q. Do you know -- can you explain what that
14 diagnosis is?

15 A. Yes. That is used for rarely encountered
16 paraphilias, and they give examples of those things like
17 zoophilia, which is arousal to animals, or arousal to
18 enemas, or arousal to urine, things that are rarely seen
19 as opposed to the eight specified paraphilic disorders,
20 which are more commonly observed.

21 Q. So the examples that are given in that section do
22 include necrophilia, right?

23 A. Yes.

24 Q. Scatologia?

25 A. Yes.

1 Q. Zoophilia, like you said.

2 A. Yes.

3 Q. Coprophilia?

4 A. Yes.

5 Q. Klismaphilia?

6 A. Yes.

7 Q. So these are some of the examples that are in
8 here that they actually identify, correct?

9 A. Right.

10 Q. Okay. But the example section, does it not say
11 examples of presentations that can be specified using
12 the other specified designation include but are not
13 limited to, and then it gives the examples?

14 A. Yes.

15 Q. Okay. And when it gives those other, what you're
16 calling rare, rarely used examples, does it give
17 criteria for those?

18 A. No.

19 Q. No. But it does give criteria for the paraphilic
20 disorder (not otherwise specified) more broadly,
21 correct?

22 A. Can you define "more broadly"?

23 Q. Well, I mean, just as that disorder. There's
24 criteria for that, is there not?

25 A. Well, I don't have the DSM in front of me, so I

1 can't tell you exactly what it says. But there are no
2 criteria like with the other disorders that say A, B,
3 and C, and you have to have those. It is just
4 paraphilias that are less commonly seen and are the
5 focus of -- again, I don't know the terms -- clinical
6 concern, or whatever.

7 Q. So you recognize that the other specified
8 paraphilic disorder category is used in situations in
9 which the clinician chooses to communicate the specific
10 reason that the presentation does not meet the criteria
11 for any specific paraphilic disorder, correct?

12 A. Correct.

13 Q. Okay. And then the examples that they list
14 include but are not limited to some of those things,
15 right?

16 A. Correct.

17 Q. Okay. Now, you kept saying on direct that there
18 are multiple reasons why people rape. Is that an
19 accurate explanation of your testimony?

20 A. Yes.

21 Q. Okay. And in your opinion, you would agree that
22 some rapes can be for a paraphilic reason, correct?

23 A. Some rapes are paraphilic, yes.

24 Q. Okay. And on direct, you said that there's no
25 way to tell if a person is more aroused to nonconsensual

1 sex than consensual sex. Is that accurate?

2 A. I don't know if I said it in that way, so I just
3 don't know.

4 Q. Okay. How would you explain it? How would you
5 tell if a rape was paraphilic?

6 A. Sexual sadism is a paraphilia. If there's an
7 indication that the offender was sexually aroused by the
8 infliction of violence, pain, or suffering, then I
9 would -- over a period of six months and all of that, I
10 would diagnose that individual with sexual sadism.

11 Q. That's a totally different diagnosis, though,
12 right?

13 A. It's a paraphilic diagnosis. You asked me about
14 that.

15 Q. Right.

16 A. This is not a nonconsent diagnosis. But you
17 asked me are there paraphilias that involve rape. Yes,
18 a sexual sadism paraphilia oftentimes, not 100 percent,
19 involves rape and violence.

20 Q. Okay. So I have to be careful how I ask you the
21 questions because I see how you're parsing the words,
22 but what I'm asking you is can there be a paraphilic
23 reason that someone would be aroused by nonconsent?

24 A. No.

25 Q. Okay. So you're saying that there's no way that

1 a person can be aroused by nonconsent so that they would
2 go and rape someone.

3 A. No, that's not what you just asked me. You said
4 a paraphilic reason. Paraphilia implies that there is
5 some sort of mental disorder that involves specific
6 arousal to nonconsent. That is what I'm saying does not
7 exist. Do offenders become aroused to nonconsent?
8 Every rapist is aroused to the nonconsenting act of
9 rape.

10 Q. Okay. And that's what, I guess, what I'm trying
11 to find out. So if that's your answer, that's fine.
12 But you said that there are multiple reasons why people
13 rape, correct?

14 A. Correct.

15 Q. All right. Let me give you a hypothetical. So
16 hypothetically, if a person was only aroused by someone
17 not consenting, that's the only reason -- not a power
18 thing or not a being mad at women or anything like that,
19 but he's aroused to the idea of someone saying no and
20 going after them, that's the arousal and that's the
21 paraphilia, do you believe that that can happen?

22 A. The answer is I don't know because I've never
23 seen it. I have never seen an offender, in my almost 40
24 years of doing this, that has told me that "I am
25 specifically aroused to the nonconsent" that does not

1 involve any other factor. So I guess, hypothetically,
2 anything is possible, but I haven't seen it. And I've
3 been doing this for an awful long time.

4 Q. Okay, but it's possible. And you may not have
5 seen everything, right?

6 A. I probably have not seen everything, but I've
7 seen a lot. And if I haven't seen it in 35 years or 40
8 years of doing these exact kind of evaluations, it makes
9 me think it doesn't exist as a genuine diagnosis.

10 Q. Okay. All right. Well, I'm not asking you about
11 whether you believe it to be a genuine diagnosis because
12 I already know your position on that. What I'm asking
13 is is it possible that someone can be driven by a
14 paraphilic interest in nonconsent.

15 A. And again, it could be one of the factors, but I
16 don't believe that someone -- that there exists a pure
17 type of offender who only commits a rape because of
18 arousal to nonconsent.

19 Q. Okay. Now, have you ever used PPGs, penile
20 plethysmograph?

21 A. I have not.

22 Q. Do you know what they're used for?

23 A. Oh, yes.

24 Q. Okay. And what are they used for?

25 A. They are used to measure arousal.

1 Q. And is it possible, if you know, that someone
2 could use a PPG and show a particular individual a
3 nonconsensual rape scenario, and would the PPG be able
4 to tell whether that showed arousal?

5 A. As far as I know, and this is based on my
6 experience in Massachusetts, primarily, you don't show
7 anybody anything, it's based on audiotapes because you
8 can't really show people child molestation or rapes, so
9 it would be audio involved. And that raises a lot of
10 questions about how well you can generalize that.

11 Q. Did you ever do sex offender treatment?

12 A. I did.

13 Q. Is it possible that someone in treatment or even
14 just general therapy could come to you as a clinician
15 and treatment provider and complain of ongoing sexual
16 fantasies of raping, fantasies that bothered the person
17 so much that he felt that he had a lack of control?

18 A. Yes.

19 Q. So you believe that that's possible.

20 A. Sure.

21 Q. Okay. And what if it was for the nonconsent?

22 A. Rape fantasies are not unusual. People -- as I
23 said, research has shown that both males and females
24 have rape fantasies. That doesn't mean that they are
25 specifically aroused to nonconsent. They might be

1 aroused to being dominated or being submissive or any of
2 those things. So no, I don't think that equates to the
3 same thing.

4 Q. Okay. Again, my question -- again, I recognize
5 I'm giving you a hypothetical, but the hypothetical
6 situation is limited to a person comes to you and says,
7 "This is my ongoing fantasy of raping," and in this
8 particular situation the person acted on it. But he
9 explains to you "My fantasy of raping, that it bothered
10 me so much that that's," you know, "that's my problem."
11 And that's it. There's no domination, there's no anger,
12 there's no other -- these other reasons for the rape,
13 but he says, "That's my reason." You still don't
14 believe that that person could have a paraphilia that
15 could be considered based on nonconsent?

16 A. I would have to ask that individual many more
17 questions and obtain much more information about what's
18 driving them, the nature of the fantasy, all of those
19 things before I could even hazard a guess.

20 Q. Okay. Fair enough. Now, you heard that
21 Dr. Graney and Dr. Hastings's testimony about their
22 belief that he does, in fact, meet the criteria for a
23 nonconsent diagnosis, right?

24 A. Yes.

25 Q. And you also heard them say that in their minds,

1 it's a rare diagnosis as well, right?

2 A. Relatively rare, yes.

3 Q. Well, but their testimony was that they did not
4 diagnose it very often. Is that what you recall?

5 A. Yes.

6 Q. Okay. So in their mind -- I mean, would you
7 agree that it's a rare diagnosis? If you were to accept
8 it -- sorry. Withdrawn. If you were to accept that as
9 a diagnosis, would you agree that it was rare?

10 A. It's a hypothetical. I can't answer because I
11 just don't accept that this exists. And if there was
12 specific criteria that was shown, I might be able to
13 answer that.

14 Q. Okay. I understand your position, so we'll move
15 on from that. But would you at least acknowledge that
16 some people in the field of sexually violent predator
17 evaluations do, in fact, apply that diagnosis?

18 A. Yes, obviously.

19 Q. And you would acknowledge that at the very least,
20 there is obviously a debate with that particular
21 diagnosis, right?

22 A. Yes.

23 Q. Now, you testified that you've done a few Adam
24 Walsh cases over the years, right?

25 A. Yes.

1 Q. But haven't done any in the last few years,
2 right?

3 A. Right.

4 Q. In fact, all of yours in the last three years
5 have been in Massachusetts and New York State, correct?

6 A. Last three years, yes.

7 Q. Okay. Now, you do stay apprised of the
8 applicable federal law in this area, correct?

9 A. I try to, yes.

10 Q. All right. So is it your understanding that the
11 federal law does, in fact, allow for this diagnosis and
12 does, in fact, accept this diagnosis?

13 A. I know that there have been cases where this
14 diagnosis has been accepted, yes.

15 Q. All right. In fact, you were in a case in
16 Massachusetts where this diagnosis was ultimately
17 accepted, correct?

18 A. I don't know.

19 Q. You don't know?

20 A. I don't recall any Massachusetts cases, so --

21 Q. Do you remember a case back in 2010 called United
22 States versus Carta?

23 A. Yes.

24 Q. And that was a case where you testified in the
25 district court, correct?

1 A. It was a federal case, yes.

2 Q. Correct.

3 A. Yes.

4 Q. Federal district court.

5 A. I remember it well.

6 Q. Okay. And in that case, the district court
7 actually agreed with you that that diagnosis was not
8 appropriate in that case, correct? Do you remember
9 that?

10 A. I know that the judge agreed that -- my memory --
11 and I may be wrong, and I apologize if I am -- was not a
12 nonconsent case. It was a hebephilia case.

13 Q. Okay. And do you recognize that they -- that
14 Carta in that -- in the district court, Carta -- agreed
15 with you that that paraphilia not otherwise specified
16 was not a legitimate diagnosis?

17 A. Yes.

18 Q. And then do you also know that that case was
19 appealed to the First Circuit?

20 A. I do.

21 Q. And do you know that the First Circuit overturned
22 that and, in fact, found that paraphilia not otherwise
23 specified is, in fact, a good, legitimate diagnosis?

24 A. Yes.

25 Q. Okay. And are you also familiar with the Seventh

1 Circuit case finding the same thing?

2 A. You would have to tell me more about it.

3 Q. That's all right. I'll move on from that.

4 One of the reasons that the Court found in the
5 First Circuit, the Carta case, that -- was that the
6 definition of sexually dangerous person in the statute
7 of section 4248 did not limit the definition of a
8 sexually dangerous person to things that are found in
9 the DSM --

10 THE COURT: The Court's gonna sustain
11 objection to his legal opinion.

12 MR. BREDENBERG: Pardon? Oh. Okay. Thank
13 you, Your Honor.

14 BY MR. BREDENBERG:

15 Q. Are you also aware of cases out of the Fourth
16 Circuit on this issue?

17 THE COURT: Same objection; same sustained.
18 I'll happily accept supplemental briefing on the legal
19 validity of the category later.

20 MR. BREDENBERG: Okay. I'll move on. Thank
21 you, Your Honor.

22 BY MR. BREDENBERG:

23 Q. Dr. Bard, with regard to the other diagnosis, or
24 one of the other diagnoses, the personality disorder not
25 otherwise specified, you've talked a little bit about

1 that on direct examination as well, correct?

2 A. Correct.

3 Q. And you do acknowledge that Mr. Kozohorsky could,
4 in fact, have been diagnosed with that in the past,
5 right?

6 A. Yes. Absolutely.

7 Q. And in the past, he clearly demonstrated a
8 pattern of violating the rights of others, primary as a
9 result of his sexual offending, correct?

10 A. Yes.

11 Q. But you don't believe that he can be diagnosed
12 with that now, right?

13 A. As I indicated, because there's no indication of
14 any current pattern. But other than that, yes.

15 Q. Well, current pattern in prison, correct?

16 A. Current pattern for the past 15 years.

17 Q. Well, in prison. He's been in prison since 2010.
18 Is that your understanding?

19 A. Yes.

20 Q. Okay. And so he hasn't had any sexually violent
21 acts in prison, right?

22 A. It isn't a matter of sexually violent acts. He
23 hasn't shown an antisocial pattern of behavior. If he
24 had shown fights every other week, I would have said
25 that he still meets it. He doesn't have to show

1 sexually violent acts for a diagnosis of antisocial. He
2 just needs to show a pattern of antisocial behavior.

3 Q. So with Mr. Kozohorsky, one of the reasons that
4 you diagnose or said that he could have been properly
5 diagnosed with antisocial personality disorder in the
6 past, or personality disorder not otherwise specified in
7 the past, was because he hadn't clearly demonstrated a
8 pattern of violating the rights of others, right?

9 A. I'm sorry. I lost that along the way. I'm
10 sorry.

11 Q. Was Mr. Kozohorsky, the way that he presented his
12 antisocial features, it was mostly focused on raping
13 people, was it not?

14 A. No. He had patterns of committing nonsexual
15 offenses also.

16 Q. But that was much before, wasn't it?

17 A. You don't look only at now. If you're trying to
18 diagnose a personality disorder, you're looking at a
19 lifelong pattern. And he clearly had, in my opinion,
20 that pattern, including both nonsexual and sexual
21 misconduct.

22 Q. So now you said something that just sounds
23 contradictory to me. It sounds like you're saying at
24 some point it stopped, he no longer has any antisocial
25 features, maybe let's call it 2010. Then you just said

1 it's lifelong and it goes back the whole time. So which
2 is it?

3 A. A personality disorder is the habitual way that
4 an individual deals with the world around them. In
5 order to diagnose it, it has to begin in adolescence.
6 That's why you look back. So if Mr. Kozohorsky or
7 anybody had no juvenile offending and nothing until he
8 was 30, and then he committed five assaults and six
9 sexual assaults, he wouldn't get the antisocial
10 diagnosis because the general criteria for personality
11 disorder says it begins in adolescence as opposed to
12 just being a bad guy who does bad things.

13 So that's why I go back. But it has to be
14 ongoing. So when it appears to stop, it doesn't just
15 stop. It goes down. Hardly anyone just stops. But you
16 have to have an ongoing pattern now in order to say he
17 continues to show a violation of the rights of others,
18 and he doesn't.

19 Q. Let's move on to your prong 3 opinion. You use
20 what you call an adjusted actuarial approach, correct?

21 A. Well, in general I do. But there are problems
22 with that now, because again, the actuarials talk about
23 likelihood of committing a sexual offense and not the
24 serious difficulty.

25 Q. So did you use any tools in this particular case?

1 A. I did.

2 Q. Okay. And what did you use?

3 A. I used the Static-99R.

4 Q. Okay. And then did you also consider dynamic
5 risk factors or not?

6 A. Yes.

7 Q. Which dynamic risk factors did you consider?

8 A. I considered things like general self-regulation,
9 sexual self-regulation. I usually consider things like
10 intimacy deficits, things like that, cognitive
11 distortions. I consider participation in treatment, and
12 I consider the presence or absence of any probation or
13 supervision.

14 Q. He hasn't had any significant sex offender
15 treatment, has he?

16 A. No.

17 Q. In fact, he told you in your interview that he
18 doesn't even need sex offender treatment because in his
19 mind he hasn't committed a sex offense in over 33 years,
20 right?

21 A. That's right.

22 Q. And you heard him testify today, right?

23 A. Yes.

24 Q. And you read his deposition transcript.

25 A. I did.

1 Q. And he still continues to deny virtually all of
2 it but for one of his rapes, correct?

3 A. Correct.

4 Q. And you would say -- would you agree that some of
5 his testimony and some of his presentation is that he,
6 in fact, still blames his victims?

7 A. He certainly blames his victims for reporting
8 sexual offenses that he considers were not sexual
9 offenses.

10 Q. And that he believes that he's the victim of
11 these -- what he called vindictive women, correct?

12 A. For two of them, yes.

13 Q. Two of the convictions.

14 A. Yes.

15 Q. Okay. Now, you heard testimony today from
16 Mr. Kozohorsky about his previous use of audiotapes to
17 record sexual encounters, right?

18 A. Correct.

19 Q. And you also heard testimony about his potential
20 future plans to use body cams and videotapes in the
21 future as his own protection?

22 A. He said that he had thought about that, yes.

23 Q. Okay. He thought about using videotapes and body
24 cams, right?

25 A. Yes.

1 Q. He also thought about using consent forms?

2 A. Yes.

3 Q. And possibility of maybe paying for sex and using
4 prostitutes, correct?

5 A. Yes.

6 Q. Do you consider those to be cognitive
7 distortions?

8 A. No. I would not classify them as cognitive
9 distortions.

10 Q. Have you ever -- you testified earlier that
11 you've kind of been around doing these things for a long
12 time. Have you ever seen anybody else take this kind of
13 defensive posture towards sexual activity?

14 A. I can't recall any other case that has had this
15 kind of precautions that he was talking about.

16 Q. Now, you've reviewed Mr. Kozohorsky's CTP
17 treatment records in the Bureau of Prisons, correct?

18 A. Yes.

19 Q. And you'd agree that he isn't fully invested in
20 sex offender treatment, right?

21 A. I think it's still very early and he's not fully
22 invested, right.

23 Q. And you also agree that he really hasn't shown
24 any evidence of learning anything from sex offender
25 treatment at this point, correct?

1 A. I think -- I think Dr. Graney talked about that,
2 that he showed a little bit of involvement and some
3 preliminary work but certainly not the kind of
4 investment that you would, you know, hope for for
5 someone who has been involved in a long time. But it's
6 also fairly new.

7 Q. Fairly...

8 A. "New."

9 Q. Okay. You'd also agree that Mr. Kozohorsky has
10 shown irresponsibility in the past cooperating with
11 supervision and sex offender registration, correct?

12 A. Registration, I don't know if I'd consider it
13 lack of cooperation or not, but yes, he certainly has
14 violated that.

15 Q. And his instant federal offense was actually
16 failure to register, correct?

17 A. Right.

18 Q. And do you recognize, even though he never got --
19 or he hadn't gotten written up, I think you called it
20 tickets, you recognize from some of the records that he
21 still violates a lot of the prison rules even though
22 he's actually not being disciplined for that?

23 A. You'd have to be more specific.

24 Q. Did you notice anything in the records that
25 indicated that Mr. Kozohorsky was not following all of

1 the prison rules?

2 A. I don't recall anything offhand, so that's why
3 I'm asking you if --

4 Q. Oh, okay. Do you see anything in the records
5 dealing with him collecting contraband, for example?

6 A. Again, nothing comes to mind offhand, but I
7 reviewed the records a long time ago.

8 Q. Okay. You recognize that Mr. Kozohorsky has had
9 infidelity in his past, correct?

10 A. Yes.

11 Q. And that he's raped women when he had other
12 willing partners available to him, correct?

13 A. Yes.

14 Q. And that he's stated that at least one of his
15 relationships was toxic, correct?

16 A. I believe he called two of them toxic.

17 Q. Okay. And that he's had sex with prostitutes.

18 A. Yes, he has.

19 Q. Okay. Now, in your report you concluded that
20 he's not demonstrated any intimacy deficits. Is that
21 right?

22 A. Yes, I did. I wrote that.

23 Q. Does that -- is that an accurate -- is that still
24 your opinion?

25 A. Well, the way I look at that has more to do with

1 whether or not he was able to manage adult relationships
2 as opposed to individuals who offend against children.
3 I tend not to comment about the quality of his
4 relationships, which have obviously been not
5 particularly good, but I think he's able to achieve
6 that.

7 Q. Ms. Costello asked you about his 2010 offense,
8 correct? Or the allegations in 2010.

9 A. Yes.

10 Q. Related to Christine?

11 A. Yes.

12 Q. And if it were true that Mr. Kozohorsky did
13 commit a sex offense against Christine in 2010, you
14 indicated that that would change your mind, correct?

15 A. In terms of the third prong --

16 Q. Correct.

17 A. It would certainly affect my opinion more, yes.

18 Q. Okay. And so it would affect -- again, assuming
19 that there was an appropriate diagnosis, it would affect
20 your opinion to suggest that there was more volitional
21 control problem for Mr. Kozohorsky?

22 A. Yes.

23 MR. BREDENBERG: Okay. No further
24 questions, Your Honor.

25 THE COURT: Redirect.

1 MS. COSTELLO: None, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you, Judge.

4 MS. SHEA: At this time, we call Dr. Plaud.

5 THE CLERK: Please place your left hand on
6 the Bible, raise your right hand, and state your name
7 for the record.

8 THE WITNESS: Joseph J. Plaud, P-L-A-U-D.

9 (The witness was placed under oath.)

10 THE COURT: Dr. Plaud, welcome back.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: You've previously testified
13 before this Court and been accepted as a expert. You
14 will so testify.

15 THE WITNESS: Thank you.

16 THE COURT: Your witness.

17 MS. SHEA: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. SHEA:

20 Q. Good afternoon, Dr. Plaud.

21 A. Good afternoon.

22 Q. What were you asked to do in this case?

23 A. I was asked to evaluate Mr. Kozohorsky in
24 connection with the petition alleging that he is a
25 sexually dangerous person according to federal law, and

1 to make judgments, professional judgments to a
2 reasonable degree of psychological certainty that
3 Mr. Kozohorsky, firstly, has engaged in or attempted to
4 engage in sexually violent conduct or child molestation;
5 whether at this time he suffers from a serious mental
6 illness, abnormality, or disorder; and thirdly, along
7 those lines, the presence of any such disorders would
8 cause him to have serious difficulty in refraining from
9 further acts of either child molestation or sexually
10 violent conduct.

11 Q. Did you reach an opinion?

12 A. I did.

13 Q. And what is your opinion?

14 A. My opinion is yes, no, and no. That he does meet
15 the first criterion; he, however, does not suffer from a
16 serious mental illness, abnormality, or disorder; and
17 that he does not at this time have serious difficulty in
18 refraining.

19 Q. So let's just jump right into the second prong.

20 A. Okay.

21 Q. Why do you opine that he does not have a serious
22 mental illness, abnormality, or disorder?

23 A. Well, he has -- and certainly I'm not the first
24 witness here, so there's been some testimony to this,
25 and I don't want to duplicate it. But I do want to say

1 that I evaluated whether or not he suffered from any
2 diagnosable condition, paying particular attention to
3 paraphilias on the one hand and personality disorders on
4 the other.

5 It is my professional judgment that he would not
6 be clinically diagnosed with any paraphilic sexual
7 condition nor would he have a personality disorder
8 diagnosis. So I did not give him a diagnosis. However,
9 I did also note and did diagnose with a substance use
10 disorder.

11 Q. Let's focus first on the paraphilic disorder.
12 Why did you decline to offer a paraphilic disorder
13 diagnosis?

14 A. Okay. Paraphilias generally speak to recurrent
15 or intense sexually arousing fantasies, urges, behavior,
16 involving sexual activity that basically goes beyond the
17 bounds of normal human experience. That's the common
18 theme.

19 And in this case, Mr. Kozohorsky is a rapist. He
20 has several victims, adjudicated for sexual criminal
21 activity. The question is does this behavior, or did
22 this behavior historically, rely on a psychological
23 foundation in which he had recurrent or intense sexually
24 arousing fantasies, urges, or behaviors involving
25 certain sexually aberrant -- "sexually aberrant" --

1 behavior.

2 My judgment is he did not. He engaged in illegal
3 sexual contact, but it was not fueled or driven, which
4 is the central requirement for the second tier for prong
5 2, by an underlying sexual deviance.

6 And that is a critical, critical issue in this
7 case. And it gets into the whole issue of why do
8 rapists rape? Now, the way I will present it to you,
9 Judge, and for the vast majority of cases, and I think
10 Mr. Kozohorsky's history fits in with this, is to
11 consider it this way: Rape is an act of violence. Sex
12 is a weapon. Like in other acts of violence that are
13 not topographically sexual, you use knives and guns and
14 coercion and tie people -- do terrible things. These
15 are all violent acts where you use weapons.

16 For rapists, sex becomes a weapon. And so what
17 drives the vast, vast majority of rapists who are not
18 sexual sadists is issues of power and control over
19 women, hostility towards women. This is what drives
20 rapists to commit the act. They use violence,
21 nonconsent, as a weapon to inflict what they're doing
22 criminally.

23 So if we want to make it a diagnostic issue that
24 they're driven by an underlying condition to engage in
25 this that is sexually deviant, that is a paraphilia,

1 then what has to happen is there has to be a
2 demonstration in their sexual history that goes far
3 beyond just what we know about their sexual criminal
4 history to the infliction of pain, suffering, and
5 humiliation on victims as a prerequisite, as a
6 foundational element for them to become sexually aroused
7 and then commit the sexually violent conduct.

8 We have that diagnosis. It's called sexual
9 sadism. And guess what? Nobody sitting here with all
10 the initials after their names has given Mr. Kozohorsky
11 a sexual sadism clinical diagnosis. Nobody.

12 So don't take my word for it. The government's
13 experts that testified earlier do not give a sexual
14 sadism diagnosis. So there is no valid clinical
15 diagnosis in this case.

16 Q. What about a paraphilic interest in nonconsent?

17 A. Well, look. There are two ways to look at it, I
18 think. There is a catchall paraphilia called -- what
19 used to be called paraphilia not otherwise specified
20 under the DSM-5 and DSM-5-TR. It's called an other
21 specified paraphilic disorder. But what the key is --
22 it is a valid diagnosis. I don't know about argument --
23 it's in there. I think Mr. Bredenberg pointed out the
24 page in the DSM-5-TR that it's in. It's in there as a
25 diagnosis. But it's a misapplication in a case like

1 this to say paraphilia not otherwise specified in the
2 old edition, or other specified paraphilic disorder
3 (nonconsent). Why? Because that particular clinical
4 paraphilia diagnosis is meant, as Dr. Bard correctly
5 pointed out, meant for low frequency sexual aberrations,
6 low frequency deviations, that there's only eight
7 paraphilia clinical diagnoses in the DSM. Well, there
8 are clearly more than eight ways to be sexually aroused
9 to things that are deviant.

10 This is what that's for. And if anybody's
11 telling me that rape is a low frequency behavior in our
12 culture, well, they're -- I don't think they can count
13 because that's not the case. It's a high frequency.
14 That's why, Judge, for years, over a decade and a half,
15 it's been considered by psychologists and psychiatrists
16 whether or not it should be included as a ninth
17 paraphilia, because it is a -- in terms of it being
18 something that happens, namely rape in America or rape
19 anywhere in the world, it's a high frequency --
20 unfortunately, it's a high frequency behavior.

21 So if anything was a paraphilia that deserved its
22 own diagnostic criteria, a paraphilic coercive disorder
23 would be that. And it has been resoundingly rejected
24 time and time again, including in the DSM-5-TR, which is
25 pretty brand new. And that's the reason, because most

1 rapists, the vast, vast majority of rapists, even ones
2 you can describe as serial rapists, engage in the
3 behavior for reasons that have nothing to do with sexual
4 deviance. It has to do with other, more transient
5 psychological phenomena such as, like I was saying,
6 power and control issues at that time, using sex as a
7 weapon during that period of time.

8 And that is the key in this case. So then to
9 backtrack and give it this other specified paraphilia
10 (nonconsent) is -- it's not supported by science. It's
11 not supported by -- the whole tradition of what clinical
12 diagnoses are meant to be and what they are meant to
13 communicate to both -- within the professional community
14 and outside of the professional community.

15 So that is why I did not give that clinical
16 diagnosis in this case. There were other dynamics
17 psychologically going on for Mr. Kozohorsky when he was
18 a younger man that are not explained by this type of
19 clinical diagnosis.

20 Q. Do you think that the diagnosis of nonconsent
21 paraphilia is widely accepted in the field of
22 psychology?

23 A. No. It's widely rejected.

24 You know, Judge, I think if you read the DSM,
25 which, unfortunately, I've had the opportunity many

1 times over the years, you know, in the paraphilia,
2 nonconsenting -- consent is used. Nonconsent is used.
3 But not -- for a different reason. When you read --
4 it's in there a number of times if you read the
5 paraphilia section. But it's referring to most -- to
6 exhibitionists, to people who engage mostly in
7 exhibitionism, frotteurism, those -- that's what they
8 mean by nonconsent, not overpowering a person and
9 engaging in sexually violent conduct with them.

10 So the term is actually specifically used in the
11 paraphilia section multiple times. You'll see
12 nonconsenting, nonconsent, but never once to refer to
13 men who rape.

14 Q. Have you discovered or are you aware of a way to
15 determine if a rapist is specifically aroused to
16 nonconsent?

17 A. Well -- yeah, I mean -- look. There is a subset,
18 and it's probably less than 10 percent of rapists, who
19 are sexual sadists. That is one of the eight
20 paraphilias. Again, nobody gave that diagnosis in this
21 case. So, you know, I guess the question is if somebody
22 gave Mr. Kozohorsky -- if one of the experts in this
23 case gave him that diagnosis, then we could argue does
24 it meet -- you know, is it -- that would be a serious
25 mental illness, abnormality, or disorder. But does it

1 cause him today to have serious difficulty, that would
2 be the focus. It wouldn't be the second criteria, it
3 would be the third we'd be arguing about more. But
4 nobody's given him that diagnosis, so we don't -- we
5 don't have to go there, I don't think.

6 But there are some rapists -- and I have treated
7 sexual sadists over the years. There are some who are
8 driven very strongly by an underlying deviance in which
9 the pain, the suffering, the humiliation of a victim is
10 a prerequisite for them to become sexually aroused and
11 engaged sexually.

12 But that is not Mr. Kozohorsky. That's not what
13 we have in his history, and certainly not today.

14 Q. Let me ask you this question: Is being a serial
15 rapist alone enough to meet the second prong of the Adam
16 Walsh Act?

17 A. No. No, because it's not -- the second prong
18 specifically refers to in the definition of what a
19 serious mental illness, abnormality, or disorder is.
20 We're talking about a congenital or acquired condition,
21 a condition of the person, an underlying psychiatric
22 condition that then has such grip strength over their
23 sexual functioning in the present today that it would
24 cause that person to have serious difficulty in
25 refraining.

1 So here we have a big disconnect. If you're
2 starting to commit people because of things with "other"
3 in the title, it should get you thinking right away. If
4 I'm gonna testify to a reasonable degree of scientific
5 and psychological certainty, diagnostically in this
6 case, and I'm relying on a misapplication of a
7 paraphilia that is supposed to be reserved for low
8 frequency types of sexual aberration, and that you can't
9 really -- and which, by the way, has been specifically
10 rejected time and time again by the professional
11 community, you're not going on -- you know, "clear and
12 convincing" I know is a legal term, but it refers to
13 highly and substantially more likely than not. Highly
14 and substantially. There's nothing high or substantial
15 about any of this stuff.

16 Q. Are you aware if any PPG studies have confirmed
17 the presence of a nonconsent attraction?

18 A. Okay. The short answer is -- and I have done
19 PPGs, Judge, for many, many years in my profession.
20 I've published studies. I've just -- here's one. "The
21 Relationship of Male Self Report of Rape Supportive
22 Attitudes, Sexual Fantasies, Social Desirability, and
23 Physiological Arousal as to PPG to Sexually Coercive
24 Stimuli." This is an article, peer-reviewed article I
25 published a number of years ago in the Journal of

1 Clinical Psychology, coauthored with my coauthor Scott
2 Bigwood.

3 So there is a way we've tried to measure -- can
4 we parse -- can we identify men who do physiologically,
5 physiological arousal specifically to acts of nonconsent
6 against women. And what the research, my research, and
7 certainly the much larger body of research over the
8 years, is this is where we talk about sexual sadism
9 again; that, yes, if this is a prerequisite
10 physiologically for them to become aroused, then it can
11 become a problem. And nonconsent obviously is involved
12 in that. But it's not the primary thing. It's kind of
13 like what you can describe as the consequence. Because
14 if you have to inflict pain on someone, there's a very
15 small amount of people out there who want that, right?
16 And there is a diagnosis for that too, by the way.
17 There is sexual masochism, as well, as a clinical
18 diagnosis.

19 So, but no. Other than that, no, you can't do
20 it. And it's not shown to be reliable.

21 Q. And so -- sorry. Just going back to the
22 question -- and I recognize your article. But are you
23 aware of whether any PPG study has confirmed or
24 established a way to show who was attracted to
25 nonconsent?

1 A. No. No, it has not, because there's too much
2 variability in the data. And I hate to say it again,
3 but normal men, for example, who go and go to church on
4 Sundays and don't do anything bad, never think -- my
5 research kind of got a window into this as well. They
6 kind of show some interest sometimes in that too. Now,
7 it doesn't mean they're gonna do anything about it.

8 But they still show it. And that's the problem
9 with this, is that there is a wide range, even above
10 normative people who don't break the law, who never
11 engage in coercive sexual behavior under any
12 circumstances also can show some arousal to this kind of
13 thing, and that's just the -- you know, it's not a neat
14 box, the way life was created. And this is a part of
15 that.

16 Q. Are you aware of any ways for psychologists to
17 differentiate a typical rapist versus someone who is
18 specifically aroused to nonconsent?

19 A. Well, that's where -- again, that's where an
20 analysis and a credible clinical diagnosis of sexual
21 sadism comes into play. So in the cases where rapists
22 are involved, we don't have a child -- we don't have
23 child molestation in this case, right? We don't have
24 pedophilia in this case, which is clearly the disorder
25 most -- you know, the vast, vast majority in these cases

1 we're talking about. The answer is no, we can't, absent
2 a bona fide clinical diagnosis of sexual sadism
3 disorder. Then we're going down that path. But that's
4 not this case.

5 Q. I know. Putting aside the sexual sadism, though,
6 are you aware of any empirically validated ways to
7 differentiate a typical rapist from someone who's --

8 A. No, not at all. Absolutely not. That's the
9 issue.

10 Q. And so Drs. Hastings and Graney testified about a
11 list of factors --

12 A. Yeah.

13 Q. -- that they used to --

14 A. Yeah.

15 Q. -- that they used to determine a presence of
16 nonconsent attraction deviance.

17 A. The Doren factors.

18 Q. Exactly.

19 A. Yeah.

20 Q. So are you familiar with that book?

21 A. I'm very familiar with it. For a couple years
22 there, Dennis Doren and I had a lot of communication
23 back and forth.

24 Q. Do you adopt these guidelines for determining --
25 Doren's guidelines for determining the presence of an

1 attraction to nonconsent?

2 A. No.

3 Q. And why not?

4 A. Okay. I think other than what I've been
5 testifying about and talking about from a physiological,
6 psychological, diagnostic perspective, Judge, I think
7 history helps here, to learn where did these things come
8 from. Where did the Doren criteria come from? What's
9 the context?

10 And I will say this whole issue of this
11 paraphilic coercive disorder or, you know, paraphilia
12 NOS nonconsent back then, didn't exist at all even in
13 the minds of anybody until probably like the 1980s.
14 There was a psychologist whose name was John Money, and
15 he created a term, it was called -- biastophilic rapism
16 was the term. And that was kind of the first really
17 go-around at this whole thing. And it kind of was an
18 academic debate in the 1980s.

19 Well, then what happened at the end of the 1980s?
20 You had the second phase of the civil commitment, the
21 sexually dangerous person/sexually violent predators.
22 The State of Washington in 1990 was the first to adopt
23 the second wave because by the 1980s all the old MDSO,
24 the mentally disordered sex offender laws that a number
25 of states had had that was a precursor to these laws

1 today, they were all repealed. Every state.

2 Well, then in 1990, Washington came back with one
3 after a terrible -- a couple terrible situations. So
4 this is where it came from. It's historical. Dennis
5 Doren, in my judgment, and I've told this to his face,
6 he created this thing out of whole cloth, specifically
7 because we had civil commitment and we had rapists and
8 how are we gonna include them. Pedophilia, this is how
9 we get the child molesters in. We already have a
10 diagnosis, pedophilia. Nobody's arguing whether that
11 exists or not, right? Now we argue about fringes of it
12 like hebephilia, ephebophilia, pedohebephilia, on that
13 domain.

14 But for the rapists, they're a very different
15 group of sex offenders than your pedophiles. This is
16 where this came from. It came from civil commitment.
17 It's not like it existed like pedophilia existed. Then
18 you had these legal things that change, and then you're
19 applying a pre-existing clinical diagnosis like
20 pedophilia to a law, right? A set of laws now. No,
21 that's not what happened here.

22 What happened here was the opposite. You had not
23 even a discussion, really, outside of Money's kind of
24 stuff like this which was, like I said, more an academic
25 debate, never accepted diagnostically still to this day,

1 but even then.

2 Then you have the civil commitment laws in the
3 1990s. All of a sudden, now, Doren comes out with this
4 book. It was 2002 when the book came out, but he had --
5 this had gone into it several years beforehand -- called
6 Evaluating Sex Offenders. And he creates these nine
7 criteria specifically so you could use this law, which
8 is incredible, I think, and totally not valid, I think
9 unethical. It's just wrong. It's just wrong.

10 Again, if we're taking out the sexual sadists,
11 because the vast, vast majority of rapists, men who
12 attack women, who perpetrate sexual violence against
13 women, do so for reasons that are not sexual deviance
14 reasons but for other psychological reasons based on
15 power, control, attitudes towards women, hostility
16 towards women, et cetera, that are more transient, that
17 are more situationally bound.

18 I mean, look at the case with Mr. Kozohorsky.
19 We've been talking about his victims, how many does he
20 have, he denies some. But he knew them. He wasn't
21 hanging out in the woods at night abducting strangers
22 and assaulting them, right? It's a different kind of
23 thing.

24 Q. So I'm gonna take you through the factors, and
25 these were the factors, again, that Drs. Hastings and

1 Graney used to diagnose a paraphilia nonconsent.

2 The first factor that Dr. Doren lists is
3 ejaculation or other clear signs of sexual arousal
4 during events that are nonconsensual. Are you aware of
5 any empirical support or research or data or anything
6 that shows a link between that, the presence of this,
7 and an attraction to nonconsent?

8 A. No, and let me say this: What men who are able
9 to complete a rape physiologically to the point of
10 ejaculation and orgasm, what they're reacting to
11 sexually is the normative. They're attracted to women.
12 That's what the -- so what's the nonconsent part of it?
13 Well, they're overpowering the women, they're inflicting
14 violence. Why? To gain consent. You see? And some
15 rapists -- actually, a percentage of rapists -- even
16 though they're still trying to engage in rape and sexual
17 violence, they lose the ability to complete the act
18 because of issues surrounding, you know, the fact that
19 it's -- there's a struggle, there's other violence going
20 on that's sort of -- I say distracting, but it goes away
21 from just the primary focus on the sexual aspects of the
22 act.

23 So the fact that men can get aroused and do get
24 aroused when they're committing rapes, what they're
25 reacting to is the normative part of it in the sense

1 that they're attracted, they're heterosexual, they're
2 attracted to adult women, and that's what they're
3 reacting to. The nonconsent part is the weapon they're
4 using to perpetrate the act.

5 Q. The next guideline or factor that Dr. Doren lists
6 is repetitive patterns of actions, as if scripts. Are
7 you aware of any research or data or studies that show
8 that the presence of repetitive patterns of actions, as
9 if scripts, is proof of an attraction to nonconsent?

10 A. No, because -- put sexual violence completely
11 aside for one second. We all have -- everybody who has
12 sexual experiences has certain likes, things they like
13 to do, techniques, things they think they're good at,
14 not good at, fantasies they have around what kind of
15 things make them -- that applies to everybody, not just
16 rapists. So to somehow cull it out and say when it
17 happens in an act of rape, it's different in the sense
18 that you're not following -- what does that mean? If
19 you're not a rapist you engage in random acts of
20 sexuality that are always spontaneous and don't follow
21 certain patterns and things of that -- that's patently
22 ridiculous.

23 Q. The third guideline is where virtually all of the
24 person's criminal behavior is sexual. Are you aware of
25 any research or data or studies that show that the

1 presence of that is an indication or confirms the
2 presence of an attraction to nonconsent?

3 A. No.

4 Q. And also, is Mr. Kozohorsky's criminal record
5 entirely sexual in nature?

6 A. It is not.

7 Q. The next factor is raping when the victim had
8 already been willing to have consensual sex.

9 A. Yeah.

10 Q. Are you aware of any studies or research or
11 evidence to show that the presence of this is an
12 indication or proof of an attraction to nonconsent?

13 A. No. And it gets around, again, the function that
14 I was talking about. The vast majority of rapists, it's
15 not the nonconsent part that's causing them arousal.
16 Again, that's what -- that could be for sexual sadists.
17 But what is is that the person is controlling the
18 situation. The person is using power and influence --
19 sex -- that's why I use that metaphor -- sex as a
20 weapon, sex as power. That's what's going on.

21 Q. The next factor that Dr. Doren lists is a short
22 time period after consequence before raping again. Are
23 you aware of any research to support that the presence
24 of that factor --

25 A. No.

1 Q. -- is proof of someone's --

2 A. If it's the same psychological dynamic, then it's
3 a meaningless factor.

4 Q. What about the next guideline, the sixth
5 guideline, which is raping under circumstance with high
6 likelihood for being caught?

7 A. Yeah.

8 Q. And are you aware of any --

9 A. No.

10 Q. -- research that shows that the presence of that
11 is proof of someone's attraction to nonconsent?

12 A. No, and I will say this: Because of the nature
13 in many cases where rape occurs and the circumstances
14 occurs, naturally speaking, where there isn't a lot of
15 planning going on, generally speaking, that is going to
16 be a byproduct of it.

17 In this case, however, again, it's -- in his
18 history, Mr. Kozohorsky's history of engaging in this
19 behavior, he wasn't, like I said earlier, hanging out in
20 parks or at dark at night in places, you know, where he
21 meets strangers or try to abduct strangers and do things
22 like that. It's a very different dynamic for him, even,
23 in that context.

24 Q. The seventh guideline is having concomitant
25 cooperative sexual partners. Are you aware of any

1 research that shows that the presence of having
2 concomitant cooperative sexual partners --

3 A. No.

4 Q. -- is proof of someone's attraction --

5 A. No.

6 Q. -- to nonconsent?

7 A. Concomitant partners -- and we see this too
8 sometimes suggested. I've been asked this mostly on
9 cross-examination for many years for pedophiles, like
10 the fact that, you know, if a person was married and
11 still engaged in sexual activity with children, because
12 they had access to an adult does that make them
13 inherently more risky. And generally speaking, no, it
14 does not, because there's an underlying deviance in
15 pedophilia driving them to do what they were doing that
16 way. We don't have that here.

17 Q. The next guideline is various types of victims in
18 purely sex offenders. Are you aware of any research or
19 data or studies that show that the presence of this
20 guideline is proof that someone is attracted to
21 nonconsent?

22 A. No.

23 Q. The final factor is maintenance of a rape kit.
24 Are you aware of any studies or research that shows the
25 maintenance of a rape kit is evidence of an attraction

1 to nonconsent?

2 A. I do not.

3 Q. If the Court were to find that this is a valid
4 diagnosis, do you think that Mr. Kozohorsky's offenses
5 support a deviant attraction to nonconsent?

6 A. I do not. I do not believe in 2023
7 Mr. Kozohorsky has a serious difficulty in refraining
8 from further acts of sexual violence going forward under
9 the terms of a lifetime supervised release, no.

10 Q. Are the facts that he has had consensual sexual
11 partners and prostitutes, how does that factor into
12 whether he may have any sort of deviant arousal to
13 nonconsent?

14 A. Well, I think in all the cases of the sexual
15 criminal conduct that we know about and documented and
16 have specific allegations and specific legal outcomes,
17 there was something else going on with him at the time
18 that pertained in a very specific way to the person who
19 became his victim. And I think that's important. I
20 think that is what was going on at the time with him.

21 I think today, moving forward in time, those same
22 dynamics are not, you know -- they're not present like
23 they were when he was a younger person. I think there
24 was a -- he had a lot of psychological issues going on.
25 And the fact that he had, you know, he was married and

1 he had and admits to having prostitutes and other
2 consenting partners does not take away from what the
3 dynamics were back then that have zero percent chance,
4 basically, of being recreated moving forward in time
5 under supervised release.

6 THE COURT: Counsel, would y'all approach
7 the bench? Actually, we can do this from where you are.
8 There's no need to move.

9 It's 5:00. I'm trying to figure out where
10 we are. Without prejudice, I just want to know where we
11 are in terms of how much longer you think you have on
12 direct. If you think there's a chance we allow this
13 witness to finish today, we can run a little bit over
14 but not extensively, so I want to know where we are.

15 MS. SHEA: I do have -- I do have a
16 significant bit left, Your Honor.

17 THE COURT: All right. We will -- it's
18 after 5:00. We will stop here. I think that last
19 question, I think, was appropriately a breaking point.
20 So we will stop and resume tomorrow at 9:00 a.m. --
21 actually, tomorrow morning at 9:30 a.m.

22 MS. COSTELLO: Your Honor, may I be heard on
23 an issue?

24 THE COURT: You may.

25 MS. COSTELLO: Dr. Plaud is the

1 court-appointed respondent-selected examiner, which
2 means that we are not able to talk to him. There's been
3 a lot of testimony today about exhibits that were
4 received in 2023, which is recently. And so I wondered
5 if the Court might entertain lifting the ban on
6 communication in order that we could discuss those with
7 him prior to resuming testimony tomorrow.

8 THE COURT: I'll hear from United States.

9 MR. BREDEBERG: I don't think the reason,
10 Your Honor, would be the appropriate cause for that. We
11 would object to that. The rule is that there's no
12 communication. Just because they happen to have
13 different evidence that -- theoretically, they haven't
14 been able to communicate with Dr. Plaud at all about any
15 of the evidence, so any new evidence wouldn't really be
16 a good reason for lifting the communication ban.

17 THE COURT: Well, I guess my question -- the
18 question is the discussion part and the providing the
19 materials part. Have those materials all been
20 previously provided in discovery? That is, is he aware
21 of what we're talking about as he's sitting in the
22 courtroom?

23 MS. COSTELLO: I mean, he was sitting in the
24 courtroom during --

25 THE COURT: I understand.

1 MS. COSTELLO: -- testimony.

2 THE COURT: But has he seen the documents?
3 I'm happy for him to have the documents but have no
4 conversation about them overnight, is where I think --

5 MS. COSTELLO: I believe he has them, Your
6 Honor. The point I was trying to make is that, you
7 know, we would have been able to depose him -- had we
8 received the documents during the discovery period, we
9 could have deposed him on them even though we're not
10 able to talk to him, but we don't have the opportunity
11 for that because they were received outside the
12 discovery period.

13 THE COURT: All right. It seems to me that
14 this -- I'm not gonna create an error for us. This
15 defendant's liberty is at stake. Dr. Plaud is a repeat
16 participant in these proceedings. I don't think that
17 there's a significant risk that he will change or tailor
18 his testimony as a result of having an opportunity to
19 confer with the defendant. I will -- let's see. So
20 he's been -- has he been deposed in this case by either
21 side?

22 MS. COSTELLO: He has not, Your Honor.

23 THE COURT: The defendant's liberty is at
24 stake. I'll permit him to meet -- I'll permit defense
25 counsel to talk overnight with Dr. Plaud.

1 MS. COSTELLO: Thank you, Your Honor.

2 THE COURT: I'm not happy about it but I'll
3 permit it. This is his life, this is his hearing. We
4 will give him the opportunity to have his best showing.
5 And we won't have any reversible error -- well, maybe
6 not.

7 Anything further we need to take up?

8 MS. COSTELLO: No, Your Honor, not from the
9 respondent.

10 MR. BREDENBERG: No, Your Honor.

11 THE COURT: All right. Thank you,
12 everybody.

13 (Proceedings recessed at 5:06 p.m.)
14
15
16
17

18 **C E R T I F I C A T E**
19

20 I certify that the foregoing is a correct
21 transcript from the record of proceedings in the
22 above-entitled matter.
23

24 /s/Risa A. Kramer

4/3/2023

25 Risa A. Kramer, RMR, CRR

Date